



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

HEATHER KLAPMEIER
DIRECT (206) 628-7586
heatherklapmeier@dwt.com

2600 CENTURY SQUARE
1501 FOURTH AVENUE
SEATTLE, WA 98101-1688

TEL (206) 622-3150
FAX (206) 628-7699
www.dwt.com

April 25, 2005

Via E-Filing

Ms. Siri Woods
Chelan County Superior Court Clerk
350 Orondo, 5th Level
Wenatchee, WA 98801

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

Dear Ms. Woods:

Attached please find the following documents for filing:

1. Petitioners' Reply in Support of Motion in Limine to Exclude Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors";
2. **Supplemental Declaration of Amy Koziak in Support of Petitioners' Motion in Limine to exclude Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors" and**
3. Declaration of E-Filing and Service.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads "Heather Klapmeier".

Heather Klapmeier
Secretary to Robert J. Maguire and Harry Korrell

Enclosures

1 over two months ago. For the reasons set out in Petitioners' Motion in Limine to Exclude
2 Evidence Concerning Previously Rejected Ballots and Other "Offsetting Errors" and
3 herein, the motion should be granted.

4 II. ARGUMENT AND AUTHORITY

5 A. WSDCC's Concession That It Will Not Pursue Evidence of Ballots 6 Rejected for Signature Mismatches Does Not Moot the Motion

7 WSDCC's new concession that it will not seek to introduce evidence of rejected
8 ballots due to mismatched signatures narrows the issues before the Court. Petitioners
9 acknowledge the concession and will not revisit the arguments supporting the exclusion of
10 such evidence. However, rehabilitating rejected provisional ballots due to mismatched
11 signatures was just one example of evidence Petitioners sought to exclude. Petitioners
12 could not be more specific about all categories of evidence it sought to exclude because
13 WSDCC continues to hide the ball with respect to the claims it intends to pursue at trial.

14 Contrary to WSDCC's assertions in its opposition, Petitioners' motion to exclude is
15 not limited to provisional ballots rejected due to signature mismatches. Petitioners' motion
16 seeks to exclude from the trial all claims not pled and all evidence not properly disclosed
17 to Petitioners. Petitioners also made clear that more briefing may be necessary if WSDCC
18 finally revealed the claims and evidence it proposes to set forth at trial:

19 At this time, Petitioners are aware of at least one type of
20 objectionable evidence that the WSDCC intends to pursue at
21 trial....However, as described in this brief, the WSDCC's
22 failure to file any responsive pleading when it intervened and
23 their incomplete and evasive discovery responses render it
24 impossible for Petitioners to know what other types of
25 related evidence the WSDCC intends to offer at trial. It is
26 Petitioners' position that all evidence purporting to challenge
27 the discretionary decisions to reject ballots made by county
election officials should be excluded at trial. If the WSDCC
identifies additional categories of evidence or alleged
offsetting errors, Petitioners may need to submit additional
briefing or file additional motions.

1 See Petitioners' Motion at 2, fn.2. Petitioners' legal arguments apply to a broader set of
2 evidence than just provisional ballots rejected for signature mismatches, and there is no
3 basis for declaring Petitioners' motion to be moot.

4 **B. WSDCC's Failure to File a Responsive Pleading Prejudices Petitioners**
5 **and Prevents Evaluation of the WSDCC's Claims**

6 The fact that Petitioners did not object to WSDCC intervening in this lawsuit does
7 not excuse the WSDCC from complying with the civil rules regarding pleading of claims
8 by intervenors. An intervenor must intervene to press claims or defenses, not just to delay
9 and complicate proceedings between the main parties (Petitioners and the parties charged
10 with error). Petitioners' decision not to oppose intervention eliminated the need for
11 WSDCC to file a formal motion to intervene and saved Petitioners the costs of filing a
12 response to the motion. WSDCC has no legal basis for arguing this somehow relieved it of
13 its obligation to set out the claims it purports to assert at trial. Petitioners raised with the
14 Court and WSDCC the failure to plead in Petitioners' response to King County's Motion
15 for Protective Order back on March 24, 2005. WSDCC still refuses to commit on paper to
16 the allegations of error it intends to prove at trial.

17 The authority cited in WSDCC's opposition only address the question of whether
18 or not to deny a party's request for intervention. *See State ex. Rel. Graham v. San Juan*
19 *County*, 102 Wn.2d 311 (1984); *Hockley v. Hargitt*, 82 Wn.2d 337 (1973). That is not the
20 issue here. Petitioners did not and are not opposing the WSDCC's intervention in this
21 case. However, the WSDCC now intends to pursue claims and defenses that it has never
22 pled, despite being required to do so. Thus, the purpose behind the requirement that
23 intervenors file a responsive pleading—"to place the other parties on notice of the
24 claimant's position, the nature and basis of the claim asserted, and the relief sought by the
25 intervenor," *Dillard v. City of Foley*, 166 F.R.D. 503, 506 (M.D. Ala)—has been frustrated
26 here. By agreeing to intervention, Petitioners did not stipulate to WSDCC's ignoring the
27 pleading requirements in the Civil Rules. A party should not be allowed to pursue claims

1 at trial that have never been pled. *See Miotke v. City of Spokane*, 101 Wn.2d 307, 337
2 (1984).

3 Moreover, the cases cited by WSDCC are factually dissimilar to the instant case.
4 In *State ex. Rel. Graham*, the intervenor did in fact file a pleading identifying the
5 allegations that it supported in the parties' complaints. *Graham*, 102 Wn.2d at 317. While
6 this pleading had been labeled a "reply," the court treated it as a functional equivalent of
7 the responsive pleading required by CR 24(c). In *Hockley*, there was no allegation or
8 discussion of a failure to file a responsive pleading, so that case has no bearing on the issue
9 created by WSDCC's failure to plead claims or defenses.¹

10 WSDCC's failure to plead any claims or defenses – whether at the commencement
11 of the contest or in response to Petitioners' demands to do so – prevents them from now
12 asserting such claims at trial. Petitioners' motion *in limine* to exclude all claims not
13 properly pled should be granted.

14 **C. The Election Contest Statute Does Not Provide for the Off-Setting of**
15 **Votes Due to Errors, Neglect or Misconduct.**

16 In addition to WSDCC's waiver of claims by its failure to plead, the election
17 contest statute also bars the WSDCC from presenting evidence of off-setting votes due to
18 alleged misconduct. WSDCC's accusation that the Petitioners are "cherry picking" illegal
19 votes is not only inaccurate, but also an attempt to shift the Court's focus from the
20 statutory language, which does not permit the off-setting WSDCC appears ready to claim.
21 WSDCC largely fails to address Petitioners' argument from the statutory language.

22 *First*, Petitioners have found and identified illegal votes and errors across the state
23 and provided the WSDCC with all evidence of illegal votes in their possession during the
24 course of discovery, regardless of which candidate would benefit from the vote's rejection.

25 ¹ WSDCC's interpretation of the *Dyson* case likewise has no bearing on the issue here.
26 *Dyson* involved a party waiting to raise an objection to intervention until after the statute of
27 limitations had passed. There has been no such change in the status quo here, and
petitioners are not challenging WSDCC's intervention. Petitioners merely seek to prevent
WSDCC from pursuing claims that have never been pled.

1 The list of contested votes provided by Petitioners on April 15, 2005, identifies contested
2 votes across the state, including in twelve counties in which Mr. Rossi received the greater
3 number of votes. *See* Petitioners' list of contested votes, attached to Bowman Declaration
4 as Exhibits 1 - 13, filed on April 15, 2005.² The fact that the evidence demonstrates that
5 King County committed far more errors and counted far more illegal votes (including more
6 felons' votes) than other counties is due to the problems in King County, not alleged
7 cherry-picking by Petitioners.

8 *Second*, Petitioners have never argued that the contest statute does not allow the
9 offsetting of *illegal votes* under RCW 29A.68.110 (though, as noted above, by refusing to
10 file a pleading as required WSDCC has waived any right to claim additional illegal votes
11 beyond those identified by Petitioners to be apportioned between the candidates under that
12 provision of the statute). The relevant provision governing illegal votes states that "No
13 election may be set aside on account of illegal votes, unless it appears that an amount of
14 illegal votes has been given to the person whose right is being contested, that, if taken from
15 that person, would reduce the number of the person's legal votes below the number of
16 votes given to some other person for the same office, *after deducting therefrom the illegal*
17 *votes that may be shown to have been given to the other person.*" RCW 29A.68.110.

18 Petitioners agree this language anticipates the deduction of illegal votes identified by
19 Petitioners from all candidates. However, RCW 29A.68.070, which governs contests based
20 on election official misconduct, *does not provide for offsetting*. That section provides:
21 "No irregularity or improper conduct... amounts to such malconduct as to annul or set aside
22 any election unless the irregularity or improper conduct was such as to procure the person
23 whose right to the office may be contested, to be declared duly elected although the person
24 did not receive the highest number of legal votes." RCW 29A.68.070.

25
26
27 ² Ms. Gregoire ran ahead of Mr. Rossi in only eight counties statewide.

1 While the Secretary of State asserts that offsetting is appropriate under .070, the
2 Secretary provides no analysis or legal basis for this assertion. Nothing in the language of
3 .070 suggests offsetting is appropriate, and offsetting is irrelevant under .011 because the
4 inquiry under .011 is whether the number of illegal votes exceeds the margin between the
5 candidates. *Foulkes v. Hays*, 85 Wn.2d 629, 636-37 (1975).

6 **Third**, WSDCC's analysis of RCW 29A.68.050 is not persuasive. The claim that
7 the Court will render a decision "after hearing the proof and allegation of the parties" is
8 true. It does not contradict Petitioners' position, particularly when read in conjunction
9 with RCW 29A.68.110, which contemplates offsetting for illegal votes. WSDCC's
10 reliance on language from the recount statutes is similarly misguided. Recounts may
11 involve the retabulation of all votes cast, but the recount statute's prohibition of partial
12 recounts has nothing to do with the procedures and evidence necessary to set aside an
13 election based on widespread error, neglect, or misconduct.

14 **Fourth**, the cases cited by WSDCC do not support the position that RCW
15 29A.68.011 and .070 permit off-setting errors. *Dumas v. Gagner* proceeded under the
16 statute now codified as RCW 29A.68.020(2), which addresses the winning candidate's
17 eligibility for office, not the validity of votes cast for the candidate. *Dumas v. Gagner*, 137
18 Wn.2d 268, 272-73 (1999). The fact that both parties presented evidence about the
19 candidate's residency has no bearing on whether the WSDCC can present evidence of
20 other errors and neglect in an effort to offset the effects of the errors and neglect identified
21 by Petitioners. In the 1899 case of *State v. Peter*, nothing in the case indicates which party
22 presented the evidence to the Court. *State v. Peter*, 21 Wash. 243, 245-47 (1899). This
23 106-year-old case does address the factual situation here.

1 **D. If Evidence of Misconduct and Errors Not Properly Pled and Not**
2 **Previously Disclosed is Not Excluded, the Record Will Likely Contain**
3 **Allegations of Error that Neither the Parties Nor the Court Can Fully**
4 **Evaluate**

5 Although WSDCC now concedes it will not pursue the rehabilitation of ballots
6 rejected due to signature mismatches, it does not identify with any specificity the claims or
7 type of evidence it *does* intend to present. WSDCC continues to offer vague assertions of
8 some claims, but refuses to identify the allegedly invalid votes or to identify the actual
9 evidence supporting those claims so that Petitioners can investigate the evidence before
10 trial.

11 WSDCC's discovery responses, to which it refers in its brief, are a web of cross-
12 references and reservations of the right to bring evidence forward later, without actually
13 providing the evidence. Almost every discovery response either refers generally to
14 thousands of pages of documents from Public Disclosure Act requests, cross-references a
15 different interrogatory response (that is equally non-responsive), or states that the WSDCC
16 will supplement its answer at a later date. *See* WSDCC's Responses to Interrogatories 3,
17 5, 7, 9, 11, 12, 16, 19, 21 and RFPs 5 and 6 to Petitioners' First Set of Discovery Requests,
18 attached as Exhibit A to Supplemental Declaration of Amy Koziak ("Koziak Suppl.
19 Decl."). WSDCC's claim that it fully and completely supplemented its discovery since the
20 original production on March 17, 2005, is false. At most, WSDCC provided some
21 clarification of its responses through telephone conferences and letters. More importantly,
22 it has *not* provided any additional documents, lists, or any evidence of the ballots and/or
23 voters it will allege at trial were wrongly counted or excluded, despite their aggressive
24 efforts to find such errors over nearly five months.

25 Even when faced with a motion *in limine* to exclude such evidence, WSDCC fails
26 to provide anything more than a vague description of the evidence it may bring forward,
27 without any lists of voters, ballots or election officials whom they will allege committed
 the wrongdoing. For example, WSDCC offers that

1 WSDCC does, however, intend to present evidence of
2 election official errors to the 2004 election to offset claims of
3 error made by Petitioners. For example, WSDCC will
4 submit evidence to show that election officials may have
5 rejected ballots by failing to make signature comparison at
6 all because of erroneous county records or information; or
7 that election officials mistakenly rejected ballots because
8 they compared ballots to election records erroneously (e.g.
checked the wrong voter's record, misread names on
ballots). WSDCC will also submit evidence that certain
counties unlawfully counted provisional ballots without first
verifying the signatures on those ballots by comparing them
to the voter's registration records, as required by law.
WSDCC has identified other errors in its discovery
responses.

9 Declaration of William Rava, ¶ 3. However, identifying general categories of errors or
10 illegal votes is not an adequate response to discovery requests, nor does it substitute for the
11 pleading required of an intervenor by CR 24. Petitioners have specifically requested
12 WSDCC to identify the votes it contends were illegal, the specific errors it claims were
13 made, the persons WSDCC claims committed the errors, and the *evidence* supporting those
14 claims. WSDCC has an obligation to provide information and documents in support of
15 these claims pursuant to the civil rules, and it continues to refuse to do so.

16 WSDCC's reliance on the Court's May 6, 2005, deadline for producing a *final* list
17 of illegal votes is misplaced. *See* Court's Proposed Order Regarding Pretrial Schedule.
18 WSDCC has not produced *any* list and now relies on the Court's Order for its proposition
19 that it is acceptable to produce its first and only list to Petitioners on May 6th, two weeks
20 before the trial begins. However, the Court's Order says nothing that gives WSDCC
21 license to ignore the civil rules and to refuse to provide meaningful discovery responses in
22 the interim.

23 WSDCC has had numerous opportunities to provide Petitioners and the Court with
24 evidence of illegal votes, errors and misconduct, but it repeatedly stalls and refuses to
25 identify the evidence it seeks to set forth at trial. WSDCC's plan to present all of its claims
26 and evidence for the first time at the deadline for the *final* version of the list is improper.
27

1 It will prejudice Petitioners and make it difficult for the Court to evaluate the claims, as
2 they will not have been investigated by the other parties in advance of trial. The purpose
3 of discovery is for the parties to exchange the documents and evidentiary support for their
4 claims (which should have been pled at the outset) to allow each party to evaluate the
5 evidence in advance of trial. WSDCC has completely failed to meet its obligations under
6 the civil rules and apparently plans to surprise the parties and the Court with allegations of
7 error and misconduct for the first time just two weeks before trial. The prejudice to
8 Petitioners and the substantial risk that claims and evidence will be presented to the court
9 that have not yet been probed and analyzed by the parties merits exclusion.

10 **E. WSDCC Overstates the Possibility of Offsetting Errors.**

11 While not strictly necessary to resolving the instant motion, Petitioners note that the
12 evidence of supposedly offsetting misconduct generally described in WSDCC's opposition
13 is greatly overstated. For example, recent depositions of county election officials in
14 Adams and Stevens counties revealed that there are *not* provisional ballots accepted as
15 valid and counted without signature verification by election officials. Prior to certifying
16 the results of the election, Adams County officials confirmed that the signatures on the
17 provisional ballots matched with those of the registered voters who cast them. *See*
18 *Deposition of Heidi Hunt and Nancy McBroom*, 45:20-48:23 (testifying that all
19 provisional ballots were matched to signatures on file for registered voters prior to
20 certification), attached as Ex. B, to Koziak Suppl. Decl. After the certification of the
21 election, Stevens County officials also went back and checked to make sure that the
22 signatures on provisional ballots matched with the signature on file for the registered voter.
23 *See Deposition of Timothy Gray*, 40:1-43:12 (testifying that provisional ballots were
24 matched to signatures on file for registered voters), attached as Ex. C, to Koziak Suppl.
25 Decl. Walla Walla and Whitman counties may also yet make the same signature
26
27

1 comparisons now that this issue has come to light (and likely would have, had WSDCC
2 complied with its obligations under CR 24 and pled its allegations in this regard).

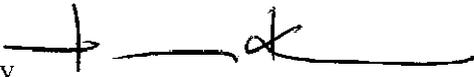
3 In addition, there is no evidence that the group of provisional ballots referred to by
4 WSDCC were ballots cast by anyone but lawfully registered voters. It appears these
5 ballots were properly cast (that is, they were placed in the required envelopes, on which the
6 necessary information about the voter was recorded; they were not cast directly in to
7 tabulating machines). Before they were tabulated, these ballots were determined by
8 elections officials to be from lawfully registered voters who had not already voted. *See*
9 *Deposition of Heidi Hunt and Nancy McBroom, 45:20-48:23; Deposition of Timothy*
10 *Gray, 40:1-43:12; Deposition of Eunice Coker and Debra Hooper, 28:9-30:10; Deposition*
11 *of Karen Martin and Katrina Manning, 95:25-100:7, attached as Exhibits B, C, D, E to*
12 *Koziak Suppl. Decl.* This situation is very different from the provisional ballot problem in
13 King County, where hundreds of provisional ballots were cast directly into the counting
14 machines without any determination that they were from registered voters who had not
15 already voted, and where it appears that hundreds of these ballots were cast by persons not
16 registered to vote.

17 III. CONCLUSION

18 For the foregoing reasons, Petitioners' Motion In Limine to Exclude Evidence
19 Concerning Previously Rejected Ballots and Other "Offsetting Errors" should be granted.
20
21
22
23
24
25
26
27

1 DATED this 25th day of April, 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
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

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

Timothy Borders, et al.,
Petitioners,
v.
King County and Dean Logan, its Director of
Records, Elections and Licensing Services, et al.,
Respondents,
v.
Washington State Democratic Central
Committee,
Intervenor-Respondent,
v.
Libertarian Party of Washington State et al.,
Intervenor-Respondents.

No. 05-00027-3

**SUPPLEMENTAL
DECLARATION OF AMY
KOZIAK IN SUPPORT OF
PETITIONERS' MOTION IN
LIMINE TO EXCLUDE
EVIDENCE CONCERNING
PREVIOUSLY REJECTED
BALLOTS AND OTHER
"OFFSETTING ERRORS"**

AMY H. KOZIAK declares as follows:

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

1. Attached as **Exhibit A** is a true and correct copy of WSDCC's Answers, Responses and Objections to Petitioners' First Set of Discovery Requests.

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

TIMOTHY BORDERS, et al.,

Plaintiffs,

v.

KING COUNTY, et al.,

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Intervenor-Respondent.

NO. 05-2-00027-3

PETITIONER'S FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO
WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE

**ANSWERS, RESPONSES &
OBJECTIONS**

TO: Intervenor-Respondent Washington State Democratic Central Committee
("WSDCC");

AND TO: Kevin J. Hamilton, Beth Colgan, and William C. Rava, Perkins Coie,
Attorneys for WSDCC.

ANSWERS, RESPONSES & OBJECTIONS
PETITIONER'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO WSDC - 1

[15934-0006-000000/SL050470.195]

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1 Petitioners make the following interrogatories and requests for production to WSDCC
2 pursuant to CR 26, 33 and 34.
3
4

5 INSTRUCTIONS

6
7 1. These interrogatories are to be answered separately and fully, in writing and
8 under oath, within thirty (30) days of the date of service on you.
9

10
11 2. Documents responsive to these requests for production are to be produced at
12
13 the offices of Davis Wright Tremaine, 2600 Century Square, 1501 Fourth Avenue, Seattle,
14 Washington, within thirty (30) days of the date of service on you of these discovery
15 requests.
16
17

18
19 3. If you object to or fail to answer any of these interrogatories, in whole or in
20 part, state your objections and/or reasons for not responding and state all factual and legal
21 justifications that you believe support your objection or failure to answer.
22
23

24
25 4. If you withhold any documents or evidence on the basis of any privilege,
26 provide a list with respect to each document so withheld, stating:
27

- 28 a. type of document withheld (e.g., letter, memorandum, email, etc.);
- 29 b. author(s) of document withheld;
- 30 c. recipient(s) of document withheld;
- 31 d. date of document withheld;
- 32 e. subject matter of document withheld;
- 33 f. nature of privilege(s) claimed; and
- 34 g. request(s) to which the document is responsive.

35
36
37
38
39 5. If you object to answering only part of an interrogatory, specify the part to
40 which you object and answer the remainder.
41
42
43
44
45
46
47

1 books, papers, accounts, electronic or videotape recordings, and any computer-generated,
2 computer-stored, or electronically stored matter from which information can be obtained and
3 translated, if necessary, into reasonably useable form. Documents which are identical except
4 for handwritten or other annotations are considered non-identical, separate documents.
5
6

7
8
9 5. "Communication(s)" refers to any manner of oral or written communication,
10 regardless of the medium by which such communication occurred.
11

12 6. "Identify," when used with respect to a person, means to state the person's:
13

- 14 a. name;
15
16 b. last-known residence address; and
17
18 c. county or precinct in which the person allegedly cast a vote.
19

20 7. "Identify," when used with respect to a document, means to describe the
21 document with sufficient particularity so as to provide the basis for a motion to compel
22 production pursuant to Civil Rule 37. In lieu of identifying a document in this manner, it will
23 be sufficient for you to produce all copies of the document in your possession, custody or
24 control.
25
26
27
28
29

30 8. "Identify," when used with respect to a communication, means to:
31

- 32 a. identify the date and length of the communication;
33
34 b. identify the place where the communication occurred and the medium
35 involved;
36
37 c. identify the persons involved;
38
39 d. identify the substance of the communication, including the precise
40 language utilized; and
41
42 e. identify any other persons who, though not present or involved,
43 possess information concerning the existence or nature of the
44 communication.
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

9. "Election Day" means November 2, 2004.

10. "2004 General Election" means the election held on November 2, 2004 as defined in RCW 29A.04.043 and RCW 29A.04.073.

11. "Gubernatorial Election" means the election for Washington Governor held on November 2, 2004.

12. "Precinct Election Board" means the inspector and judges appointed pursuant to RCW 29A.44.460 and RCW 29A.44.410 to preside over all election-day procedures for a precinct or polling place, including the receipt, deposit, and counting of ballots cast.

13. "Absentee Ballot" means a vote by mail ballot issued for the 2004 General Election.

14. "Provisional Ballot" means a ballot issued to a voter at a polling place on election day by the Precinct Election Board pursuant to RCW 29A.04.008(5).

15. "Challenge" means a challenge to a person's right to vote made pursuant to RCW 29A.08.810 and RCW 29A.08.820.

16. "Illegal Votes" means votes you contend were cast illegally in the 2004 General Election.

GENERAL OBJECTIONS

1. WSDCC objects to production of information or documents that are outside of its possession, custody or control.

2. WSDCC objects to the production of privileged communications, including attorney-client communications, or information covered by the attorney work-product doctrine.

1 3. WSDCC objects to these discovery requests to the extent they seek
2 information that is neither relevant to the issues in the litigation nor reasonably calculated to
3 lead to the discovery of admissible evidence.
4
5

6 4. Discovery is ongoing in this case, and WSDCC reserves the right to
7 supplement or amend these responses as new information is disclosed in the course of this
8 litigation.
9
10
11

12 5. Unless attached hereto or otherwise noted, documents will be produced at the
13 offices at Perkins Coie LLP, 1201 Third Ave., 48th floor, Seattle, WA. These documents
14 will be made available at a time mutually convenient for the parties and their counsel.
15
16
17

18 6. Each General Objection applies to each of the interrogatories and requests for
19 production below, as though fully stated. Any repetition is for emphasis only and not to the
20 exclusion of any other General Objection.
21
22
23

24 **SPECIFIC ANSWERS, RESPONSES & OBJECTIONS**

25 **INTERROGATORIES**

26 **INTERROGATORY NO. 1:** Identify any Challenge you made to any person's
27 right to vote in the 2004 General Election or Gubernatorial Election on or before Election
28 Day.
29
30
31
32
33

34 **ANSWER:** The WSDCC did not Challenge any person's right to vote in the 2004
35 General Election or Gubernatorial Election on or before Election Day.
36
37
38
39
40

41 **INTERROGATORY NO. 2:** For any Challenge identified in response to
42 Interrogatory No. 1, identify the person whose right to vote you Challenged.
43
44

45 **ANSWER:** See answer to Interrogatory No. 1, above.
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

INTERROGATORY NO. 3: Do you have any information indicating that any felon voted in the 2004 General Election? If so, describe the information and specifically identify the following:

- a. The felon;
- b. The date that the county in which the felon voted learned of the felon's conviction;
- c. Any facts indicating whether the felon has had his or her rights restored and, if they have been, the date the rights were restored;
- d. What steps you took, if any, to determine if the person's rights had been restored;
- e. Any facts indicating that the felon voted in the Gubernatorial Election; and
- f. Any facts indicating which candidate the felon voted for in the Gubernatorial Election.

ANSWER: Subject to the following objections, the WSDCC has the following information indicating that an alleged felon may have voted in the 2004 General Election: (1) information provided to the WSDCC by petitioners ("Petitioners' List"); (2) information provided to the WSDCC by the various counties in response to discovery in this action and/or public records requests; (3) information published in various public reports and newspaper articles; (4) information that four alleged felons may have voted in Whatcom County; and (5) information that 17 alleged felons may have voted in Snohomish County. The WSDCC is investigating the people on these various lists and, with respect to subparts (b), (c), (d), (e) and (f), will supplement its response should it uncover responsive information. At this time, the WSDCC has not confirmed whether the people on these lists are felons or voted in the 2004 General Election. But for those people listed in answer to

1 Interrogatory No. 14 and others who might have identified themselves publicly, the WSDCC
2 does not have any information to suggest that these people voted in the Gubernatorial
3 Election and, if they did, for whom they might have voted.
4
5

6 Attached hereto as Exhibit A is a list of alleged felons who may have voted in the
7 2004 General Election, other than those on Petitioners' List. In addition, the WSDCC will
8 produce copies of the public reports and newspaper articles regarding alleged felons who
9 may have voted in the 2004 General Election. To the extent petitioners do not already have
10 the information provided by the counties, the WSDCC will make the discovery responses
11 and/or public records request responses available.
12
13
14
15
16
17

18 Finally, voter files from the Secretary of State and the counties may include
19 responsive information, to the extent such voter files indicate who voted. Similarly,
20 databases from the Washington State Patrol and the administrator of courts may include
21 responsive information, to the extent such databases indicate who might be a felon and for
22 any such felon, who have had their rights restored. The WSDCC understands that
23 Petitioners already have these voter files and databases and access to all information
24 contained therein; if not, the WSDCC will make electronic copies available.
25
26
27
28
29
30
31

32 The WSDCC objects to this request as overbroad. The WSDCC has not investigated
33 all facts that might indicate whether a felon has had his or her rights restored and, if they
34 have been, the date the rights were restored. Again, the WSDCC's investigation is ongoing
35 and it will supplement its response as appropriate.
36
37
38
39
40
41

42 **INTERROGATORY NO. 4:** Identify any communications you have had with any
43 felon identified in response to Interrogatory No. 3.
44
45
46
47

1 **ANSWER:** Subject to the following objections, the WSDCC is not aware of having
2
3 had any communications with any of the alleged felons listed on the Petitioners' List or
4
5 Exhibit A hereto. The WSDCC will also produce certain emails relating to alleged felons
6
7 who may have voted in the 2004 General Election. The WSDCC objects to the phrase "any
8
9 communications" as overbroad, unduly burdensome and not reasonably calculated to lead to
10
11 the discovery of admissible evidence. Furthermore, like the Rossi Campaign, the WSDCC
12
13 cannot know with any certainty whether any of the millions of voters with which it
14
15 communicated during and/or about the 2004 General Election are felons.
16
17

18 **INTERROGATORY NO. 5:** Do you have any information indicating that any
19
20 votes were cast in the name of a deceased person in the 2004 General Election? If so,
21
22 describe the information and specifically identify the following:
23

- 24 a. The deceased person;
25
26 b. The date of death of the deceased person;
27
28 c. The date that the county in which the deceased person was registered
29 learned of the deceased person's death;
30
31 d. The person who voted in the name of the deceased person;
32
33 e. Any facts indicating that a vote was cast in the name of the deceased
34 person in the Gubernatorial Election; and
35
36 f. Any facts indicating the candidate for which such a vote was cast in
37 the Gubernatorial Election.
38
39

40 **ANSWER:** The only information that the WSDCC has indicating that any votes
41
42 were cast in the name of a deceased person in the 2004 General Election is (1) information
43
44 provided to the WSDCC by petitioners in Petitioners' List; (2) information provided to the
45
46
47

1 WSDCC by the various counties in response to discovery in this action and/or public records
2 requests; and (3) information published in various public reports and newspaper articles.
3

4 The WSDCC is investigating the people on these various lists and, with respect to
5 subparts (b), (c), (d), (e) and (f), will supplement its response should it uncover responsive
6 information. At this time, the WSDCC has not confirmed whether votes were cast in the
7 name of deceased voters in the 2004 General Election. But for those people listed in answer
8
9
10
11
12 to Interrogatory No. 14 and others who might have identified themselves publicly, the
13
14 WSDCC does not have any information to suggest that such votes were cast in the
15
16 Gubernatorial Election and, if they were, for whom they might have voted.
17

18 Attached hereto as Exhibit B is a list of deceased people credited with having voted
19 in the 2004 General Election, other than those on Petitioners' List. In addition, the WSDCC
20
21 will produce copies of the public reports and newspaper articles regarding deceased people
22
23 credited with having voted in the 2004 General Election. To the extent petitioners do not
24
25 already have the information provided by the counties, the WSDCC will make the discovery
26
27 responses and/or public records request responses available.
28
29

30 Finally, voter files from the Secretary of State and the counties may include
31
32 responsive information, to the extent such voter files indicate who voted. Similarly,
33
34 databases from various parties, including the Washington Department of Health, may
35
36 include responsive information, to the extent such databases indicate who might be dead.
37
38 The WSDCC understands that Petitioners already have these voter files and databases and
39
40 access to all information contained therein; if not, the WSDCC will make electronic copies
41
42 available. The WSDCC's investigation is ongoing and it will supplement its answer as
43
44 appropriate.
45
46
47

1 an election in any other state on Election Day. To the extent such investigation uncovers
2 responsive information, the WSDCC will supplement its answers. In addition, voter files
3 from the Secretary of State and the counties may include responsive information, to the
4 extent such voter files indicate who voted. The WSDCC understands that Petitioners
5 already have these voter files and access to all information contained therein; if not, the
6 WSDCC will make electronic copies available.
7
8
9
10
11

12
13
14 **INTERROGATORY NO. 8:** Identify any communications you have had with any
15 person identified in response to Interrogatory No. 7.
16

17 **ANSWER:** Subject to the following objections, the WSDCC has not had any
18 communications with any person who it knew or suspected cast a vote in the 2004 General
19 Election and in an election held in any other state on Election Day. The WSDCC objects to
20 the phrase "any communications" as overbroad, unduly burdensome and not reasonably
21 calculated to lead to the discovery of admissible evidence. Furthermore, like the Rossi
22 Campaign, the WSDCC cannot know with any certainty whether any of the millions of
23 voters with which it communicated during and/or about the 2004 General Election cast a
24 vote in the 2004 General Election and in an election held in any other state on Election Day.
25
26
27
28
29
30
31
32
33
34
35

36 **INTERROGATORY NO. 9:** Do you have any information indicating that any
37 person cast more than one vote in the 2004 General Election? If so, describe the information
38 and specifically identify the following:
39
40
41

- 42 a. The person;
43
44 b. The date that the county in which the person voted learned that the
45 person cast more than one vote;
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

- c. Any facts indicating that the person voted in the Gubernatorial Election; and
- d. Any facts indicating which candidate the person voted for in the Gubernatorial Election.

ANSWER: The only information that the WSDCC has indicating that any person cast more than one vote in the 2004 General Election is (1) information provided to the WSDCC by petitioners in Petitioners' List; (2) information provided to the WSDCC by the various counties in response to discovery in this action (the WSDCC specifically refers petitioners to Spokane County's answer to Petitioners' Interrog. No. 12 and exhibits A and B to Cowlitz County's answers) and/or public records requests; and (3) information published in various public reports and newspaper articles.

The WSDCC is investigating the people on these various lists and will supplement its response should it uncover responsive information. At this time, the WSDCC has not confirmed whether any person cast more than one vote in the 2004 General Election. In all instances, the WSDCC does not have any information to suggest that these people voted in the Gubernatorial Election and, if they did, for whom they might have voted. To the extent petitioners do not already have the information provided by the counties, the WSDCC will make the discovery responses and/or public records request responses available.

Attached hereto as Exhibit C is a list of persons who may have cast more than one vote in the 2004 General Election, other than those on Petitioners' List. The WSDCC will also produce copies of the public reports and newspaper articles regarding persons who may have cast more than one vote in the 2004 General Election. Voter files from the Secretary of State and the counties may include responsive information, to the extent such voter files indicate who voted. The WSDCC understands that Petitioners already have these voter files

1 and access to all information contained therein; if not, the WSDCC will make electronic
2 copies available.
3
4

5
6 **INTERROGATORY NO. 10:** Identify any communications you have had with any
7 person identified in response to Interrogatory No. 9.
8
9

10 **ANSWER:** Subject to the following objections, the WSDCC has not had any
11
12 communications with any person who it knew or suspected cast more than one vote in the
13 2004 General Election. The WSDCC objects to the phrase "any communications" as
14 overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of
15 admissible evidence. Furthermore, like the Rossi Campaign, the WSDCC cannot know with
16 any certainty whether any of the millions of voters with which it communicated during
17 and/or about the 2004 General Election cast more than one vote in the 2004 General
18 Election.
19
20
21
22
23
24
25
26
27

28 **INTERROGATORY NO. 11:** Do you have any information indicating that any
29 member of any Precinct Election Board engaged in misconduct in relation to the 2004
30 General Election or the Gubernatorial Election? If so, describe the information and
31 specifically identify each such Precinct Election Board member.
32
33
34
35

36 **ANSWER:** The WSDCC objects to this request to the extent it calls for a legal
37 conclusion as to what activities or omissions might constitute actionable "misconduct" in an
38 election contest under Washington law. The WSDCC does not have any information
39 indicating that any member of any Precinct Election Board engaged in any actionable
40 "misconduct" in relation to the 2004 General Election or the Gubernatorial Election and is
41
42
43
44
45
46
47

1 still waiting for petitioners to specifically identify Precinct Election Board conduct that they
2 believe supports this election contest.
3

4 Without admitting that such conduct constitutes actionable "misconduct" under
5 Washington election law and without admitting that "precinct election board" includes
6 election official generally, the WSDCC does have information relating to ballots that may
7 have been counted before being verified. This information comes from documents provided
8 to the WSDCC by the various counties in response to discovery in this action and/or public
9 records requests. The WSDCC also refers petitioners to the Declaration of Joshua C.
10 Jungman in Support of Petition for Mandamus filed in the *McDonald v. Reed* case, to which
11 some of the petitioners were parties. In addition, we have an indication that the precinct
12 board in Othello #4 may have issued 14 valid ballots without getting a signature; this
13 indication is based on the ballot accountability forms provided by Adams County.
14

15 To the extent petitioners do not already have the information provided by the
16 counties, the WSDCC will make the discovery responses and/or public records request
17 responses available.
18

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33 **INTERROGATORY NO. 12:** Do you have any information indicating that Illegal
34 Votes were cast in the 2004 General Election? If so, describe the information and
35 specifically identify the following:
36

- 37
- 38 a. The person casting the Illegal Vote;
 - 39 b. The date that the county in which the person voted learned of the
40 Illegal Vote;
 - 41 c. Any facts indicating that the person voted in the Gubernatorial
42 Election;
- 43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

- d. Any facts indicating which candidate the person voted for in the Gubernatorial Election; and
- e. The precinct in which you contend the Illegal Vote was cast.

ANSWER: The WSDCC objects to the term "Illegal Vote" as vague and ambiguous. The Court has not yet determined what constitutes an "illegal vote," and the WSDCC's investigation is ongoing. The WSDCC refers petitioners to its answers to Interrogatory Nos. 3 through 11, above. In addition, and without prejudice to its objections, the WSDCC has information that a certain number of ballots may have been counted before being verified, as articulated in more detail in answer to Interrogatory No. 11.

This information comes from public reports and articles in newspapers (which the WSDCC will produce) and county responses to discovery requests and public records requests. To the extent petitioners do not already have the information provided by the counties, the WSDCC will make the discovery responses and/or public records request responses available.

INTERROGATORY NO. 13: Identify any communications you have had with any person identified in response to Interrogatory No. 12 or any person about the Illegal Votes identified in response to Interrogatory No. 12.

ANSWER: The WSDCC objects to the term "Illegal Vote" as vague and ambiguous. The Court has not yet determined what constitutes an "illegal vote." The WSDCC refers petitioners to its answers to Interrogatory Nos. 4, 6, 8 and 10, above.

INTERROGATORY NO. 14: For each Illegal Vote identified in response to Interrogatory No. 12, do you contend that you can determine whether the Illegal Vote was

1 cast in favor of Christine Gregoire or in favor of Dino Rossi? If so, state the basis for that
2 contention and identify that determination with respect to each such Illegal Vote.
3

4 **ANSWER:** Yes. Any voter determined to have cast an Illegal Vote, however that
5 term is ultimately defined, can be asked under oath whether he or she voted in the
6
7 Gubernatorial Election and, if so, for whom he or she voted. The trier of fact can determine
8
9 whether that testimony is believable. The WSDCC also refers petitioners to its answers to
10
11 Interrogatory Nos. 3 through 10, above. In addition, the following persons, who may have
12
13 cast Illegal Votes, have stated publicly that they voted for Dino Rossi:
14
15
16

17

County	Last Name	First Name	Middle Name	Address	Source
King	Campbell	Darren	J.	24314 35TH AVE S	King County Journal (3/9/05)
King	Cotterell	Bryan	Martin	13805 116TH AVE NE	King 5
King	Divome	Shahn			Seattle Times (1/23/05) Registered Republican in CA per Petitioner's Document Production
KING	HEIDMILLER	JOHN	WILLIAM	3051 ALKI AVE SW B 7311 COAL CREEK PKY SE K203	Seattle Times (1/23/05) Rossi Files; List; Seattle P-I 1/7/05; Seattle Times 1/7/05
King	Heinen	Rosemary			Seattle Times (1/23/05) Rossi Files; List; Seattle P-I 1/7/05; Seattle Times 1/7/05
King	Holmgren	Charlette	Mary	4322 SW HOLLY ST	Seattle Times (1/23/05)
King	Nause	William	L.	3924 NE 6TH PL	Seattle Times (2/9/05)
King	Walker	Paul	S.	10614 60TH AVE S	Kitsap Sun (1/27/05)
Kitsap	Rosen	Cameron			TNT (2/19/05)
Pierce	Green	Jeff			

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

37 **INTERROGATORY NO. 15:** Do you have any information indicating that any
38 Washington county failed to issue absentee ballots to Military Voters pursuant to the time
39 limits imposed by Washington law? If so, describe the information and identify any such
40 county.
41
42
43

44 **ANSWER:** No. In response to petitioners' request for production no. 2 to
45 respondent Secretary of State, the Secretary of State produced documents (numbered 33-
46
47

1 372) demonstrating that every Washington county issued absentee ballots to Military Voters
2 within the time limits required by Washington law, RCW 29A.40.070. Further, in response
3 to petitioners' discovery requests, numerous counties have confirmed that they met their
4 obligations under Washington law with respect to issuing absentee ballots to Military
5 Voters. To the extent petitioners do not already have the information provided by the
6 counties, the WSDCC will make the discovery responses and/or public records request
7 responses available.
8
9
10
11
12

13 Finally, the WSDCC refers petitioners to

14 [http://www.secstate.wa.gov/office/osos_news.aspx?i=p3XObTIOd8rZ9bxxNdxR%2f0%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=p3XObTIOd8rZ9bxxNdxR%2f0%3d%3d)
15
16
17
18
19 %3d.
20

21
22 **INTERROGATORY NO. 16:** Do you have any information indicating that during
23 the 2004 General Election Provisional Ballots were placed directly into a ballot box, ballot
24 machine, or other ballot storage or counting device prior to verification of whether those
25 ballots should be counted? If so, describe the information and specifically identify the
26 following:
27
28
29
30
31

- 32
- 33 a. The precinct or polling location at which this occurred;
 - 34 b. All persons with Personal Knowledge of this occurring;
 - 35 c. Any facts indicating that the Provisional Ballots included a vote in the
36 Gubernatorial Election;
 - 37 d. Any facts indicating the candidate for whom the vote was cast in the
38 Gubernatorial Election; and
 - 39 e. Any facts indicating whether the person who cast the ballot was
40 entitled to vote regardless of whether the ballot was verified.
41
42
43
44
45
46
47

1 **ANSWER:** Through discovery responses provided by the counties in this action
2
3 and/or responses to public records requests, and articles in newspapers and other public
4
5 reports, the WSDCC has some information indicating that during the 2004 General Election
6
7 Provisional Ballots may have been placed directly into a ballot box, ballot machine, or other
8
9 ballot storage or counting device prior to verification of whether those ballots should be
10
11 counted. The WSDCC generally refers petitioners to its other interrogatory answers, and in
12
13 particular to its answer to interrogatory number 11. The WSDCC also refers petitioners to
14
15 the Declaration of Joshua C. Jungman in Support of Petition for Mandamus filed in the
16
17 *McDonald v. Reed* case, to which some of the petitioners were parties.

18 The WSDCC will produce copies of the public reports and newspaper articles. To
19
20 the extent petitioners do not already have the information provided by the counties, the
21
22 WSDCC will make the discovery responses and/or public records request responses
23
24 available. Should the WSDCC uncover additional responsive information in the course of
25
26 discovery, it will supplement its answer.
27
28

29
30 **INTERROGATORY NO. 17:** Identify any mailings conducted to Absentee Ballot
31
32 voters by you on your behalf. For any such mailing, identify the following:
33

- 34 a. Whether you asked any voter whom you now claim or believe was
35 deceased to vote for Christine Gregoire;
36
37 b. Whether you solicited votes for Christine Gregoire from any person
38 whom you claim or believe cast the deceased person's ballot;
39
40 c. Whether you asked any voter whom you now claim or believe to be a
41 felon to vote for Christine Gregoire;
42
43 d. Whether you asked any voter whom you now claim or believe to have
44 voted twice in the 2004 General Election to vote for Christine
45 Gregoire; and
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

e. Whether you asked any voter whom you now claim or believe to have voted both in Washington and in any other state to vote for Christine Gregoire.

ANSWER: The WSDCC objects to this interrogatory as unduly burdensome, seeking information beyond the permissible scope of discovery, and not reasonably calculated to lead to the discovery of admissible evidence. Whether the WSDCC asked any voter to vote for a particular candidate has no bearing on the legality of that person's vote or the candidate for whom that person voted and otherwise has no tendency to make any fact at issue in this action more or less likely. This interrogatory is also unduly burdensome in that it asks the WSDCC to determine to whom all campaign material was sent. Pursuant to an agreement between petitioners and the WSDCC, the WSDCC will not be providing information in response to this request.

INTERROGATORY NO. 18: Identify the date(s) upon which you gained access to registered voter lists for each Washington county or the Secretary of State after November 1, 2002.

ANSWER: The WSDCC objects to this request as beyond the scope of permissible discovery and not reasonably calculated to lead to the discovery of admissible evidence. The WSDCC is not subject to a laches defense unless and until the WSDCC alleges additional illegal votes, something it expressly reserves the right to do as its investigation proceeds.

INTERROGATORY NO. 19: Do you possess any documents relating to the counting of votes cast (i) by felons, (ii) in the name of deceased persons, (iii) by persons

1 voting in Washington and in another state, and (iv) by persons voting more than once in
2 Washington. If so, identify the documents and identify:
3

- 4
5 a. The person casting the vote and whether he or she was a felon, cast a
6 vote on behalf of a deceased person, voted in two or more states, or
7 voted more than once in Washington;
8
9 b. The date that the county in which the person voted learned of the
10 person's status or conduct;
11
12 c. Any facts indicating that the person voted in the Gubernatorial
13 Election;
14
15 d. Any facts indicating which candidate the person voted for in the
16 Gubernatorial Election; and
17
18 e. The precinct in which the vote was cast.
19

20
21 **ANSWER:** The WSDCC refers petitioners to the documents identified and
22 produced in response to Interrogatory Nos. 3, 5, 7 and 9. To the extent it identifies or
23 uncovers additional documents during discovery, the WSDCC will supplement its answer.
24
25

26
27
28
29 **INTERROGATORY NO. 20:** Identify any communications you have had with any
30 person identified in response to the preceding interrogatory.
31

32
33 **ANSWER:** The WSDCC objects to this request as duplicative of other requests, and
34 refers petitioners to its answers to Interrogatory Nos. 4, 6, 8 and 10, above.
35
36

37
38
39 **INTERROGATORY NO. 21:** Identify all communications between you or anyone
40 acting on your behalf or in concert with you and persons whose absentee or provisional
41 ballots were initially rejected by any county because of a mismatched signature, no signature
42 on file, or no voter registration on file.
43
44
45
46
47

1 **ANSWER:** To the extent this request relates to petitioners' equal protection claims
2
3 relating to the submission of signature verification forms after November 16, 2004, the
4
5 WSDCC objects to this request as beyond the scope of permissible discovery and not
6
7 reasonably calculated to lead to the discovery of admissible evidence. The Court has
8
9 dismissed such claims. Otherwise, the WSDCC's investigation is ongoing and it will
10
11 supplement its answer as appropriate.

12
13
14 **INTERROGATORY NO. 22:** Identify all documents recording, calculating,
15
16 showing, or analyzing any differences between (i) the total number of ballots cast in the
17
18 2004 General Election (and all recounts) and (ii) the number of ballots indicated as having
19
20 been voted for a gubernatorial candidate or excluded on some basis.
21

22 **ANSWER:** The WSDCC objects to this request to the extent it calls for the
23
24 production of documents protected by the attorney-client privilege and/or work-product
25
26 doctrine. The WSDCC refers petitioners to documents and information provided by the
27
28 various counties in response to discovery in this case and/or public records requests. To the
29
30 extent petitioners do not already have the information provided by the counties, the WSDCC
31
32 will make the discovery responses and/or public records request responses available. To the
33
34 extent other non-privileged and responsive documents exist, the WSDCC will produce them.
35
36

37
38 **INTERROGATORY NO. 23:** Referring to the Petition by Electors and Petition for
39
40 Writ of Mandamus and Other Relief attached as Exhibit A, please describe in detail the
41
42 factual basis for each of the contentions made in paragraphs 20, 29, 31, 32, 37, and 51 and
43
44 identify all documents supporting or otherwise relating to those allegations and all person
45
46 with knowledge of the factual basis for those allegations.
47

1 **RESPONSE:** The WSDCC objects to this request as premature. The WSDCC has
2 not yet determined on which documents it will rely in opposition to this election contest, at
3 least in part because the petitioners have not themselves determined on which documents
4 they will rely in support. The WSDCC currently anticipates that it will need to rely on the
5 various voter files and databases in its possession, such as those identified above. The
6 WSDCC believes that petitioners are in possession of these same voter files and databases;
7 if not, the WSDCC will produce electronic copies.
8
9
10
11
12

13 The WSDCC also objects to this request for production as vague in failing to identify
14 with specificity or sufficient particularity the documents or even the categories of documents
15 sought. Finally, the WSDCC objects to this request to the extent it seeks materials protected
16 by the work product doctrine. The WSDCC will supplement this response as required by
17 the Civil Rules.
18
19
20
21
22
23
24
25

26 **REQUEST FOR PRODUCTION NO. 2:** Produce all documents described in,
27 identified in response to, or relied on or referred to in answering, Interrogatories No. 1—23.
28
29

30 **RESPONSE:** The WSDCC objects to this request to the extent it calls for the
31 production of documents protected by the attorney-client privilege or the work-product
32 doctrine. The WSDCC refers petitioners to its answers to Interrogatory Nos. 1-23.
33
34
35
36
37

38 **REQUEST FOR PRODUCTION NO. 3:** Produce all documents containing,
39 reflecting, or referring to communications regarding the 2004 General Election or
40 Gubernatorial Election between you and the following persons and entities: King County
41 the Office of the Governor, the Secretary of State, the Attorney General, Gregoire for
42 Governor, the Democratic National Committee, the Democratic Governors Association, the
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Service Employees International Union, the American Federation of Labor-Congress of Industrial Organizations, the American Federation of State, County, and Municipal Employees, the Washington Federation of State Employees, or any person affiliated with those organizations.

RESPONSE: The WSDCC objects to this request as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

This request also calls for the production of documents protected by the attorney-client privilege and/or work-product doctrine. Moreover, the petitioners have never alleged fraud, and the Court has already dismissed petitioners' equal protection claims, such as they were.

Without waiving its objections, the WSDCC will produce communications between it and the various counties, the Secretary of State, and the Attorney General relating to the issues raised by this election contest.

REQUEST FOR PRODUCTION NO. 4: Produce all documents referring or relating to training or procedures used by Democratic Poll Watchers, Observers, or "voting protection team" members regarding the 2004 General Election or Gubernatorial Election including but not limited to the initial count, machine recount, and hand recount of ballots.

RESPONSE: The WSDCC objects to this request as vague and potentially overbroad in its reference to "all documents referring or relating to" the training or procedures identified. The WSDCC also objects to this request as beyond the scope of permissible discovery and not reasonably calculated to lead to the discovery of admissible evidence and seeking information protected as work product or by the attorney-client privilege, to the extent such documents include or reflect attorney advice and/or legal positions. The WSDCC did not itself conduct training of Democratic Poll Watchers,

1 Observers or "voting protection team" members regarding the 2004 General Election or
2
3 Gubernatorial Election. The training given to or procedures used by such individuals has no
4
5 tendency to make any fact at issue in this action more or less likely. The WSDCC is not
6
7 producing documents in response to this request.
8
9

10 **REQUEST FOR PRODUCTION NO. 5:** Produce all documents referring or
11
12 relating to persons whose absentee or provisional ballots were initially rejected by any
13
14 county because of a mismatched signature, no signature on file, or no voter registration of
15
16 file in the 2004 General Election.
17

18 **RESPONSE:** To the extent this request relates to equal protection claims relating to
19
20 the submission of signature verification forms after November 16, 2004, the WSDCC
21
22 objects to this request as beyond the scope of permissible discovery and not reasonably
23
24 calculated to lead to the discovery of admissible evidence. The Court has dismissed such
25
26 claims. Otherwise, the WSDCC's investigation is ongoing and it will supplement its answer
27
28 as appropriate.
29

30
31
32 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents shown to, given
33
34 to, or received from persons whose absentee or provisional ballots were initially rejected by
35
36 any county because of a mismatched signature, no signature on file, or no voter registration
37
38 on file in the 2004 General Election.
39

40 **RESPONSE:** To the extent this request relates to equal protection claims relating to
41
42 the submission of signature verification forms after November 16, 2004, the WSDCC
43
44 objects to this request as beyond the scope of permissible discovery and not reasonably
45
46 calculated to lead to the discovery of admissible evidence. The Court has dismissed such
47

1 claims. Otherwise, the WSDCC's investigation is ongoing and it will supplement its answer
2 as appropriate.
3
4

5
6 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents containing,
7 reflecting, or referring to communications between David McDonald and Christine
8 Gregoire, Foster Pepper & Shefelman, or any person affiliated with those organizations
9
10 regarding the 2004 General Election or Gubernatorial Election.
11
12

13 **RESPONSE:** The WSDCC objects to this request as vague and potentially
14 overbroad in its reference to "all documents containing, reflecting, or referring to" the
15 identified communications. The WSDCC also objects to this request as beyond the scope of
16 permissible discovery and not reasonably calculated to lead to the discovery of admissible
17 evidence and seeking information protected as work product or by the attorney-client
18 privilege. With the exception of communications between Mr. McDonald and counsel for
19 the Secretary of State, as to which the WSDCC does not have any objections, the WSDCC is
20 not producing documents in response to this request.
21
22
23
24
25
26
27
28
29
30
31

32 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents containing,
33 reflecting, or referring to communications between Jenny Durkan and Christine Gregoire or
34 Gregoire for Governor regarding the 2004 General Election or Gubernatorial Election.
35
36
37

38 **RESPONSE:** The WSDCC objects to this request as vague and potentially
39 overbroad in its reference to "all documents containing, reflecting, or referring to" the
40 identified communications. The WSDCC also objects to this request as beyond the scope of
41 permissible discovery and not reasonably calculated to lead to the discovery of admissible
42 evidence and seeking information protected as work product or by the attorney-client
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

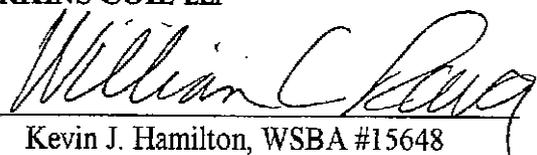
privilege. Further to an agreement between petitioners and the WSDCC, the WSDCC is not producing documents in response to this request.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents containing, reflecting, or referring to any communications between you and America Coming Together ("ACT"), MoveOn.org, Western States Center, and any organizations working to increase voter turnout or working to register voters.

RESPONSE: The WSDCC objects to this request as vague and potentially overbroad in its reference to "all documents containing, reflecting, or referring to" the identified communications. The WSDCC also objects to this request as beyond the scope of permissible discovery and not reasonably calculated to lead to the discovery of admissible evidence. To the extent such communications exist, they would have no tendency to make any fact at issue in this action more or less likely. Further to an agreement between petitioners and the WSDCC, the WSDCC is not producing documents in response to this request.

DATED: March 17, 2005.

PERKINS COIE LLP

By 

Kevin J. Hamilton, WSBA #15648
William C. Rava, WSBA #29948

Attorneys for the Washington State Democratic Central Committee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

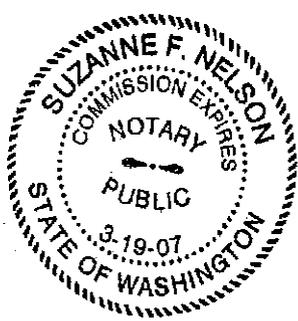
VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Paul Berendt, being first duly sworn, upon oath, depose and states: That he/she an officer of the Washington State Democratic Central Committee in this lawsuit, that he has read the within and foregoing interrogatories and requests for production and answers thereto, knows the contents thereof, and believes the same to be true and correct to the best of his knowledge.

Paul Berendt

SUBSCRIBED AND SWORN to before me this 17th day of March 2005.



Suzanne F. Nelson
(Signature of Notary)

Suzanne F. Nelson
(Print or Stamp Name of Notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My Commission Expires: 3/19/07

EXHIBIT B

each 1 MS. COLGAN: To get started I'm going to have
2 of you say your name and position with the county into the
3 record.

4 MS. MCBROOM: I'm Nancy McBroom. I'm the Adams
5 County Auditor.

6 MS. HUNT: I'm Heidi Hunt, and I'm the elections
7 administrator.

8 BY MS. COLGAN:

9 Q. And Ms. McBroom, how long have you been the Adams
10 County Auditor?

11 MS. MCBROOM: Since 1997.

12 Q. Prior to becoming the auditor did you work for
the 13 Auditor's Office?

14 MS. MCBROOM: Yes, I did.

15 Q. In what capacity?

16 MS. MCBROOM: I was the chief deputy auditor.

17 Q. And how long were you the chief deputy auditor?

18 MS. MCBROOM: Since 1987.

19 Q. And prior to being the chief deputy auditor did
you 20 work for the Auditor's Office?

21 MS. MCBROOM: No, I didn't.

22 Q. And Ms. Hunt, I'll ask you the same question.
How 23 long have you been the elections administrator?

24 MS. HUNT: Since December of '96.

25 Q. And prior to being the elections administrator
did

1 you work for the Auditor's Office?

2 MS. HUNT: No.

3 Q. Now that we have that all on the record, have
4 either of you been deposed before?

5 MS. MCBROOM: Yes.

6 MS. HUNT: Yes.

7 Q. Well, I'm going to give you the very brief
rundown
8 then of some things you're probably aware of. The first is
9 that there's a record being taken today, so we all have to
be
10 sure to say yes or no instead of nodding or shaking our
11 heads, and also we need to be careful not to talk over the
12 top of each other. Since there are two of you, if both of
13 you have to answer one of you can go first and then the
other
14 one. That will help out our court reporter quite a bit.
And
15 then if I have asked you a question and you don't
understand
16 my question tell me. I'll rephrase it, and we'll try to
make
17 sure we're understanding each other. If at some point you
18 need a break just let me know, whether it's to check on
19 something, use the restroom, whatever.

20 MS. MCBROOM: Okay.

21 Q. And also before we get into the substantive
portion
22 is it your understanding today that you are testifying on
23 behalf of Adams County?

24 MS. MCBROOM: Yes.

1 A. To my knowledge it's 22 months for a federal
2 election. I would have to check a Retention Schedule. We
do 3 check that.

4 Q. So these envelopes are kept in the course of that
5 Retention Schedule.

6 A. That would be correct.

7 Q. And as we also discussed I have made a request
that 8 we receive a copy of those envelopes. The person that we
9 talked about earlier, I believe, or the two people rather
10 that had directly inserted their ballots, the provisional
11 ballots into the boxes, if I'm recalling correctly your
12 testimony was that you were able to determine those were
13 registered voters.

14 A. Yes.

15 Q. And did you maintain their Provisional Ballot
16 Envelopes as well?

17 A. No. They did not complete an envelope, although
18 they signed in the poll books, but they did not complete an
19 envelope. There would be no envelope for them.

20 Q. And then have you ever gone back through those
21 Provisional Ballot Envelopes and done a verification of the
22 signatures as compared to your registration records?

23 A. Yes.

24 Q. When did that happen?

25 A. I'm uncertain of the date. It was prior to

1 certification.

2 Q. I'm sorry? So prior to the November 17th
3 certification?

4 A. Before certification.

5 Q. Before certification you did an actual
verification

6 of the signatures on those ballots to the signatures in
your

7 database.

8 A. Of the envelopes, yes.

9 Q. And so that was something separate and apart from
10 the verification process we were talking about earlier?

11 A. Yes.

12 Q. And what was the reason you did that?

13 A. We received a call from the Secretary of State's
14 office.

15 Q. And who from the Secretary of State?

16 A. I don't remember.

17 Q. And what did the individual from the Secretary of
18 State tell you?

19 A. They just advised us, reminded us of the WAC and
20 advised us we should check them.

21 MS. MCERROOM: Double-check them.

22 MS. HUNT: Double-check just to make sure.

23 Q. And can you describe the process of doing that
24 check for me?

25 A. I used their voter number. I pulled up the same

the 1 screen we were discussing before and specifically checked
2 signature for a match.

3 Q. And each of those provisional ballots that were
4 ultimately counted were verified that looking at those
5 signatures.

6 A. Yes.

7 MS. TEBELIUS: I want to go through this
8 verification. It looks to me like you really had two
9 verifications, separate verifications on the provisionals.
10 Would you say that's a correct analysis?

11 MS. HUNT: My analysis would say I had three,
12 possibly even four. One was at the polls where the poll
13 worker knew the provisional voter in 98 percent of the
14 situation. The second check was my staff actually pulling
up 15 all of the possibilities by last name and then she
submitting 16 them to me. In most cases I think upon reviewing the
17 envelopes you'll see that there is really only one option
for 18 voter number, and then I pulled up that number and did the
19 verification of all of the person's vital statistics,
20 address, all of that, and then checking to make sure that
21 they had not returned any other ballot for this election,
and 22 then the final verification is then when we went back and
23 verified the signatures again.

24 Q. When you pulled up -- You, yourself, pulled up
the

25 numbers and you checked to make sure that the vital

1 statistics. It's like checking a pulse beat or something.

2 A. Sorry.

3 Q. Whatever term you want to use. That was checking
4 to see if they were registered, the name was right, the
date
5 of birth was right, and the address was correct, and then
6 finally after that before certification you went back and
7 checked the signature. A separate time you went back and
8 checked it.

9 A. That's correct.

10 Q. It may well be that one of the parties will argue
11 that you should have done the signature check at the time
12 before you counted the provisionals, so my question to you
13 is, and I'll ask that to each of you if you may. Let me
ask
14 the question first to Ms. McBroom and then to Ms. Hunt. Is
15 there any doubt in your mind that those provisionals that
you
16 counted were -- any doubt in your mind that they were not
--
17 that they were not invalid voters or that they in fact were
18 valid voters?

19 MS. MCBROOM: None whatsoever.

20 Q. You believe they were all valid voters.

21 A. Exactly.

22 Q. Ms. Hunt, would you have answered me any
different?

23 MS. HUNT: No, I have no doubt.

24 Q. Now I'm going to ask you a series of questions
that

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ROUGH DRAFT TRANSCRIPT

DEPOSITION 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
215 the hour of 1:15 p.m., the proceedings being reported at
South Oak, Colville, Washington

1 APPEARANCES:

2

3 FOR THE DEFENDANT(S)

4

5 BETH COLGAN

6 PERKINS COIE

7 1201 Third Avenue, Ste. 4800

8 Seattle, WA 98101

9 (206) 359-8000

10

11 FOR THE PETITIONER(S)

12

13 TRAVIS L. SINES

14 ATTORNEY AT LAW

15 PO Box 890

16 Mercer Island, WA 98040

17 (206) 355-1549

18

19 ROBERT F. GREER

20 FELTMAN, GEBHARDT, GREER & ZEIMANTZ

21 1400 Paulsen Center

22 Spokane, WA 99201

23 (509) 838-6800

24

25 ALSO PRESENT : Lloyd Nickel

13 to determine whether or not they matched the registration.
14 A. Normally what happens is the election staff does
15 most of that work. It they get one that they're not sure
of
16 themselves, then they refer 'em to the canvassing board and
17 let us make that final decision.
18 Q. Does your election staff have the authority to
19 reject a ballot if they're not sure?
20 A. If they're not sure?
21 Q. Yes. Does your election staff have the authority
22 to reject a ballot for any reason? Without canvassing
board
23 approval.
24 A. No. They're all processed through the canvassing
25 board.

40

1 Q. Are you aware of whether or not any -- are you
2 aware of whether or not your election staff reviewed any
3 signatures other than the three or four that were
4 reviewed by the canvassing board.
5 A. In terms of provisional ballots? Or in terms of
6 absentee?
7 Q. In terms of provisional ballots, thank you.
8 A. No, I don't believe that we did do that. Let me
9 add to that, please.
10 Q. Sure.

11 A. After the election was final, actually, probably
12 some time in March when we received an inquiry from a
13 journalist about it, we were then asked to go back and, if
we
14 could, verify those provisional signatures. And we did do
15 that.

16 Q. Do you remember the name of the journalist?

17 A. Oh. It's a Seattle PI, I don't recall his name.

18 Q. Does Gregory Roberts sound familiar?

19 A. Yeah, I think that -- that's possible.

20 Q. When you stated that after being contacted by
this
21 journalist that you went back and verified provisional
22 signatures, can you explain what you did in that process?

23 A. Actually we were -- after the article was
printed,

24 I received a call from the Washington Republican party
asking
25 if I would consider verifying those signatures.

41

1 Q. Do you know who received that --

2 A. And we --

3 Q. Go ahead.

4 A. We had the -- still had the information, so I
5 instructed my election staff to go back through and look at
6 the ones that we actually counted.

7 Q. Do you know who from the Washington State
8 Republican party contacted you?

9 A. Oh. I want to say Tom Miller but I'm not...

10 Q. To you have -- did he contact you by telephone or
11 by e-mail?

12 A. Telephone.

13 Q. Do you have any notes from that conversation?

14 A. I don't believe so.

15 Q. And are you certain that this person was from the
16 Washington State Republican party?

17 A. Well when I -- I returned the call and was
answered

18 by the state of -- republican party, so I assumed he was
with

19 the party.

20 Q. Did he explain why it is they wanted you to
engage

21 in this --

22 A. He had seen the article and was just inquiring as
23 to if I would good back or could I go back and verify
those.

24 Q. Did he say anything about the election contest in
25 that conversation?

42

1 A. I don't -- I'm not sure. I guess if he didn't, I
2 assume that that was why he wanted me to go back and
recount

3 'em.

4 Q. Did he mention anything about the Rossi
campaign's

5 involvement in his request?

6 A. I don't recall the specifics.

7 Q. Is there anything else about the conversation
that
8 you had with this individual that you do recall and can
9 describe for me?

10 A. No. He was just basically asking if we would
11 consider did go that. And that was about the same time I
12 realized that we hadn't checked them before so I...

13 Q. Do you remember how long after the Seattle PI
14 article was printed that you received this call?

15 A. I'd say it was -- I believe the article came out
on
16 a Thursday, I got the call on Friday and I mentioned that I
17 would have to think about my answer and think -- he said he
18 would call me back, I think, on Monday.

19 Q. And he -- did he call you back on Monday?

20 A. Yes, he did.

21 Q. And what did you discuss at that time?

22 A. I just said that we had decided to go ahead and
23 verify 'em and they were doing it as we spoke.

24 Q. Do you make any comment about whether he was
making
25 similar requests to other counties?

43

1 A. There were other counties in the article and he
--

2 he may have said something like they were asking -- they

were

3 calling those counties and and asking -- requesting the
same,

4 would they consider going back and verifying them.

5 Q. And what were the results of your work with
respect

6 to his request?

7 A. We found no signatures of any question.

8 Q. Just to make sure I understand you. What you're
9 saying is that when you reviewed the provisional ballots,
10 that you had counted and compared them to the signatures on
11 record, you didn't see any problems.

12 A. Right. Correct.

13 Q. Was there any training done in signature
14 verification done before that process was undertaken?

15 A. No.

16 Q. Who actually did the work?

17 A. Tammy Duncan.

18 Q. Did she ask you any questions while she was going
19 through this process?

20 A. No. I -- on occasion had they found any, and she
21 said they hadn't. Or she hadn't, I mean.

22 Q. Did she ever ask you to take a look at a
signature

23 just to double check?

24 A. No.

25 Q. Did you have any other communications with the

EXHIBIT D

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 DENIS TRACY

17 COLFAX COUNTY PROSECUTOR'S OFFICE

18 400 North Main Street

19 Colfax, Washington 99011

20 (509) 397-6250

21 Appearing on behalf of the Colfax County

22

23

24

25

1 BY MS. TEBELIUS:

2 Q. Ms. Hooper and Coker, I'm Diane Tebelius. I
3 represent the Petitioner in this election case, you indicated
4 in response to --

5 MS. TEBELIUS: Jea, are you there?

6 THE REPORTER: Yes, I'm here. I'm going.

7 MS. TEBELIUS: Okay. Just wanted to make sure.

8 BY MS. TEBELIUS:

9 Q. In response to a question for Ms. Colgan, you
10 indicated -- she asked if you had verified the signatures,
11 and you said, no, that you had not verified the signatures,
12 all except that the -- verifying the provisional ballots.
13 And then she also asked if you've been asked to verify, if
14 anyone called, and you indicated that you received a call
15 from a Mr. Sheridan for the Washington State Republican
16 Party; is that correct?

17 A. I'm not sure of his name, but yes, yes.

18 Q. And he asked you -- He did ask you -- Didn't he
19 ask you to say -- called you to say, "Are you going to
20 verify?" He didn't ask you to verify; he asked you if you
21 were going to verify the signatures.

22 A. (Ms. Coker) A little of both. He said, "Are you
23 going to?" And I said, "No, we're not."

24 Q. Okay.

25 A. (Ms. Coker) And he said, "Do you plan to in the
Page 27

1 future in the next," I don't remember what he said, in a week
2 or two, and I said no. And I said, "We will revisit that
3 issue if we are ordered to by a court. But at this time
4 we've got to move on. There's too much to do right now to go
5 off and do that."

6 Q. Now, you indicated that the 783 ballots that were
7 accepted -- the provisionals that were accepted, you did not
8 verify the signatures. Is that your testimony today?

9 A. (Ms. Coker) Yes, correct.

10 Q. But how did you determine that those ballots
11 should be accepted?

12 A. They were checked for their -- basically in the
13 WAC, that -- it says that it will be checked for their names,
14 their date of birth, active status, whatnot. But the
15 signature is the only one that we missed.

16 Q. So is it your testimony today that you believe
17 those 783 provisional ballots that were accepted are, in
18 fact, valid voters in your county?

19 A. (Ms. Coker) Yes.

20 Q. And there's no doubt in your mind?

21 A. (Ms. Coker) No.

22 Q. Do you check the -- You said check the name on
23 there, you check the address; is that correct?

24 A. (Ms. Coker) Correct.

25 Q. You check the date of birth?

1 A. (Ms. Coker) Correct.

2 Q. Was there anything else you checked on there to
3 make sure they were valid voters?

4 A. (Ms. Coker) We checked their voter ID number.
5 Well, we looked them up and we entered that onto the
6 provisional if they hadn't already done it, the date of
7 birth, and their voter registration record, which is names,
8 addresses, you know, all of the above. But the information
9 is on the voter registration system. We check it, and we
10 make sure it is that person.

11 Q. Now, you indicated also that 219 of the
12 provisionals were rejected; is that correct?

13 A. (Ms. Coker) That's correct.

14 Q. And is it -- And is the reason they were rejected
15 is because they did not still fulfill one of the criteria;
16 i.e., it was a -- they weren't registered in this county?

17 A. (Ms. Coker) Correct. We weren't able to find
18 their names. Some of them we couldn't read the handwriting
19 whatsoever; we couldn't read it to pull it up and check it.
20 Various reasons, but they were not in the system, and we
21 couldn't verify them as a King County or Spokane County
22 voter, so they were ultimately rejected.

23 Q. You said -- Your testimony is that you brought it
24 up, and you couldn't verify their writing or what do you mean
25 by that?

EXHIBIT E

1 SUPERIOR COURT OF THE STATE OF WASHINGTON
2 FOR CHELAN COUNTY
3 TIMOTHY BORDERS, et al.,
4 Petitioners,
5 vs. Case No. 05-2-00027-3
6 KING COUNTY, et al.
7 Respondents,
8 and
9 WASHINGTON STATE DEMOCRATIC
10 CENTRAL COMMITTEE,
11 Intervenor-Respondent.

12

13

14

15

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

16

17

18

19 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
20 Shorthand Reporter, CSR #29906, on April 20, 2005, commencing
at the hour of 9:10 a.m., at the Walla Walla County
21 Prosecutor's Office, 240 West Alder Street, Suite 201, Walla
Walla, Washington.

22

23

24

25

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, Washinton 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

1 A. (Ms. Manning) We're running out of room, to put it
2 that way.

3 Q. Let me go, if I may, thank you very much,
4 Ms. Martin to the WAC which is Exhibit 2, and it's
5 434-253-047, and, actually, you should look at Exhibit No. 3.
6 And in that exhibit you indicated that you --

7 MS. COLGAN: Which one are you talking about?

8 MS. TEBELIUS: 2 is in that.

9 MS. MARTIN: Which one is 3?

10 MS. COLGAN: The e-mail.

11 MS. TEBELIUS: The e-mail. Sorry.

12 MS. COLGAN: Here's a copy.

13 MS. MARTIN: Okay. I just have my copy. That's
14 okay. I found it.

15 BY MS. TEBELIUS:

16 Q. Your testimony earlier, if I'm correct, says that
17 you received this from Cheryl Moss, and what you looked at
18 was a paragraph which says -- requires provisional ballots to
19 be mailed within five working days after the election. And
20 that's what you concentrated on when you got that e-mail and
21 WAC was attached. And so did you read through the WAC at
22 all?

23 A. (Ms. Martin) I can't say at this point whether I
24 did or not. My memory is way beyond that at this point.

25 Q. Okay. As to those provisional ballots, it

1 says -- at that underline in Exhibit 2, it says, "A
2 provisional ballot cannot be counted unless the voter's name,
3 signature, and the date birth, if available, matches their
4 voter registration record." Is it fair enough to say that
5 every provisional ballot that was accepted matched a voter
6 name in your database?

7 A. (Ms. Martin) Yes.

8 Q. Is it fair enough to say that every provisional
9 ballot that was accepted matched the date of birth in your
10 database?

11 A. (Ms. Martin) Yes.

12 Q. And is it fair enough to say that every
13 provisional ballot that was accepted had a voter registration
14 record in your system?

15 A. (Ms. Martin) Yes.

16 Q. Is there --

17 A. (Ms. Martin) I'm just going to clarify.

18 A. (Ms. Manning) Well, they're the ones that we
19 know --

20 Q. Well, first of you all -- Hold on. Hold on. Hold
21 on. I'm asking Ms. Martin. I can't have interruptions on
22 it. I want to hear from you the answer to the question. Is
23 it fair -- Is every provisional ballot that was accepted, did
24 they have a voter registration record in your system? That
25 was accepted.

1 A. (Ms. Martin) I guess I would need to clarify it
2 and ask to discuss that with Katrina on this point because
3 she's the one there. There could be -- we did have some that
4 were not registered but we accepted them because they should
5 not have been cancelled.

6 Q. Okay.

7 A. (Ms. Martin) So that would be probably kind of a
8 clarification, I assume.

9 Q. But you would have had a vote registration
10 record, right?

11 A. (Ms. Martin) One that said it was cancelled, yeah.

12 Q. One that said -- Okay.

13 A. (Ms. Martin) Yeah.

14 Q. Okay. I'll come back to you in a minute.

15 A. (Ms. Martin) And the service voter, right, okay.

16 Q. Okay. Let me go to Ms. Manning who's itching to
17 give a response to this question.

18 A. (Ms. Martin) Well -- I'm sorry. I know you want
19 that to come from me, but in this case she's the one that's
20 done the research and knows more than on that.

21 Q. That's fair enough. Okay. I'll ask Ms. Manning
22 on that. Let me go through the whole question, then. Did
23 every provisional ballot that got counted have a voter name
24 under in your database?

25 A. (Ms. Martin) No.

1 Q. Okay. And did every provisional ballot that got
2 counted did not have a voter registration record in your
3 database?

4 A. (Ms. Manning) I'm going to rephrase my first
5 answer.

6 Q. Okay.

7 A. (Ms. Manning) Because I'm thinking of service
8 voters who are absentees that aren't in our system. But the
9 not registered that were cancelled in error do have a record.
10 So, yes, they do, provisionals do have records. All the
11 provisionals we counted do have a record.

12 Q. They have a record in your system?

13 A. (Ms. Manning) Correct.

14 Q. Okay. And in that system, they would have a
15 name, a date of birth, and a signature on your system?

16 A. Yes.

17 Q. And the only thing that you -- I hear from you --
18 from both of you today is, while you didn't check the
19 signatures in the method in which you checked absentee
20 signatures, you nonetheless were looking at those signatures
21 as you were going through approving the provisionals?

22 A. (Ms. Martin) That would correct.

23 Q. Is that correct?

24 A. (Ms. Martin) Yes.

25 Q. Because I want to get this clear because one of

2 have been you counted, so I want to make sure that you have
3 records on that. Because we -- well, you know what it is --

4 A. (Ms. Martin) I would feel very comfortable in
5 saying yes. We checked -- we probably checked these
6 provisionals better than we checked the poll voters, and
7 maybe to some extent, better than we check our absentees.
8 Like I said, as far as visually sitting down, and the only
9 thing we're looking at is signature here versus signature in
10 the system, no. But as far as in the course of your work,
11 you're seeing the signature on the card because we -- you
12 know, in most cases we're pulling their actual registration
13 card as well as having that ballot in front of us which is --
14 we're trying to find out why they're cancelled, so we're
15 pulling that registration card to look at any backup
16 information that was attached to that cancellation -- to that
17 card and looking in the system. Yeah, it's there, and we're
18 looking at it several times throughout, you know --

19 Q. Okay. Then I will ask Ms. Manning the question.
20 If you were asked to testify at trial, would you say that you
21 are a hundred percent confident that every provisional ballot
22 that was counted in your county is a ballot that should have
23 been counted as a voter in the 2004 election?

24 A. (Ms. Martin) My personal opinion? would be yes.

25 Q. would you disagree, with that?

1 A. (Ms. Martin) No, I would not. I would agree that,
2 yeah, I think they were all as valid as could be. As I

3 explained earlier, we -- you know, and aside from the fact we
4 had the other out there, probably 90 percent of those
5 provisionals were produced by the -- where poll voters do
6 not. So I would have more confidence in these provisional
7 than I would have in maybe somebody at the polls.

8 Q. All right. would you just hold one minute?

9 MS. COLGAN: Sure.

10 MS. TEBELIUS: I apologize.

11 MS. COLGAN: That's okay.

12 BY MS. TEBELIUS:

13 Q. Ms. Martin, when you deal with the Secretary of
14 State, did you deal with Nick Handy very much or at all?

15 A. (Ms. Martin) Personally? No. We got a lot of
16 e-mails from him. I think probably most of the e-mails were
17 after the election and just status of things that were going
18 on, but no advice from him at all.

19 Q. I'm sorry to keep you waiting. I don't have have
20 any further questions. I thank you for enduring this blast
21 of questions.

22 MS. COLGAN: I have two quick follow-ups.

23 EXAMINATION

24 BY MS. COLGAN:

25 Q. Just, again, to make sure we have a clear record,

1 as Ms. Tebelius stated, you never actually verified that the
2 signatures were the same. You may have viewed them, but
3 didn't specifically verify them in the way you did absentee

1 3. On April 25, 2005, I caused the document listed below:

2 **Petitioners' Reply in Support of Motion in Limine to Exclude Evidence**
3 **Concerning Previously Rejected Ballots and Other "Offsetting Errors"**

4 **Supplemental Declaration of Amy Koziak in Support of Petitioners'**
5 **Motion in Limine to exclude Evidence Concerning Previously Rejected Ballots and**
6 **Other "Offsetting Errors"**

7
8 to be filed with the Clerk of Chelan County Superior Court via Electronic Filing Legal
9 Services (E-Filing.com) which sent notification of such filing to the following persons,
10 with this Certificate to follow:

11 **Kevin Hamilton, Esq.**
12 Perkins Coie LLP
13 Attorneys for Washington State Democratic
14 Central Committee
15 1201 Third Avenue, Suite 4800
16 Seattle, WA 98101

11 **Thomas Ahearne**
12 For: Secretary of State Sam Reed
13 Foster Pepper & Shefelman
14 1111 Third Avenue, Suite 3400
15 Seattle WA 98101

15 **Dale M. Foreman**
16 Foreman, Arch, Dodge, Volyn &
17 Zimmerman P.S.
18 124 North Wenatchee Avenue, Suite A
19 P.O. Box 3125
20 Wenatchee WA 98807-3125

15 **Richard Shepard**
16 **John S. Mills**
17 For: Libertarians
18 Shepard Law Office, Inc.
19 818 S. Yakima Avenue, #200
20 Tacoma, WA 98405

19 **Gary Riesen**
20 Chelan County Prosecuting Attorney
21 PO Box 2596
22 Wenatchee WA 98807-2596

19 **Tim O'Neill**
20 Klickitat County Prosecuting Attorney
21 205 South Columbus Ave., MS-CH18
22 Goldendale WA 98620

22 **Barnett N. Kalikow, Esq.**
23 For: Klickitat County Auditor
24 Kalikow & Gusa PLLC
25 1405 Harrison Avenue NW, Suite 207
26 Olympia WA 98502

22 **L. Michael Golden**
23 Lewis County Senior Deputy Prosecuting
24 Attorney
25 345 West Main Street
26 Chehalis WA 98532

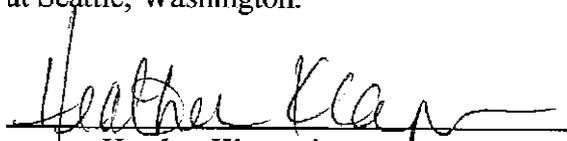
1 **Gorden Sivley**
2 **Michael C. Held**
3 Snohomish County Deputy Prosecuting
4 Attorneys
5 2918 Colby Avenue, Suite 203
6 Everett WA 98201-4011

Jeffrey T. Even, Asst. Attorney General
For: Secretary of State Sam Reed
Attorney General's Office
PO Box 40100
Olympia WA 98504-0100

5 **Russell J. Speidel,**
6 Speidel Law Firm,
7 7 North Wenatchee Avenue, Suite 600,
8 Wenatchee, WA 98807

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

11 DATED this 25th day of April, 2005, at Seattle, Washington.

12
13 
14 Heather Klapmeier