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SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

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

Petitioners,

v.

Chelan County; Klickitat County; Klickitat County Auditor Diana Housden; Lewis County Auditor Gary Zandell; Snohomish County; Sam Reed, in his official capacity as Secretary of State for the State of Washington; Frank Chopp, Speaker of the Washington State House of Representatives; and Lieutenant Governor Brad Owen, President of the Washington State Senate,

Respondents,

v.

Washington State Democratic Central Committee,
Intervenor Respondents

v.

Libertarian Party of Washington State,
Intervenor Respondents.

Honorable John E. Bridges

NO. 05-2-00027-3

RESPONDENT
SECRETARY OF STATE'S
INTERROGATORIES AND
REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO THE
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE [*"Secretary of
State's Discovery Requests To
the Democrats"*]

**AND THE WASHINGTON
STATE DEMOCRATIC
CENTRAL
COMMITTEE'S SECOND
SUPPLEMENTAL
RESPONSES THERETO**

TO: Respondent Secretary of State ("Secretary");

AND TO: Jeffrey Even and Thomas Ahearne, Attorneys for Respondent Secretary of State;

AND TO: Harry Korrell and Robert Maguire, Attorneys for Petitioners.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - I

[15934-0906/S1.051220.316]

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Phone: (206) 359-8000
Fax: (206) 359-9000

1 Pursuant to CR 26, 33 and 34, Intervenor-Respondent Washington State Democratic
2 Central Committee ("WSDCC") hereby serves its Supplemental Answers, Responses and
3
4
5 Objections to Secretary of State's Discovery Requests to WSDCC.
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I. GENERAL OBJECTIONS

WSDCC hereby incorporates the General Objections listed in its April 8 Answers,
Responses and Objections to the Secretary of State's Discovery Requests in these
Supplemental Answers, Responses and Objections.

INTERROGATORIES & PRODUCTION REQUESTS

INTERROGATORY NO. 20: Please:

- (a) for each lawful vote you claim was cast in the 2004 election but not counted as a result errors, omissions, misconduct, neglect, wrongful acts, irregularities, or improper conduct of elections officials, identify the voter in whose name you claim that lawful vote was cast - including each such voter's full name and, to the extent available to you, that voter's residence address, telephone number, voter ID or registration number, county voting precinct, and date of birth;
- (b) for each vote you identify, briefly state the error, omission, misconduct, neglect, wrongful act, irregularity, or improper conduct you claim caused that lawful vote to not be counted (e.g., late issuance of military ballot, refusal to correct error brought to election official's attention, etc.);
- (c) for each vote you identify, state the candidate for whom you claim that vote was apparently cast in the 2004 Governor's election; and
- (d) for each vote you identify, state every type of direct or circumstantial evidence you rely upon for your claim concerning the gubernatorial candidate for whom that vote was apparently cast (e.g., proportional analysis, statement by the voter, etc.).

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 2

[15934-0906/SL051226.316]

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1 To facilitate the prompt and orderly evaluation of the lawful votes you claim were not
2 counted in the 2004 Governor's election, please provide your answers in the matrix format
3 illustrated below.
4
5

6 **SECOND SUPPLEMENTAL ANSWER:**
7

8 WSDCC's answer to this Interrogatory does not currently lend itself to presentation
9 in the matrix format suggested by the Secretary of State. Although its investigation is not
10 yet complete, WSDCC is currently aware of the following categories of votes which may be
11 lawful votes in the 2004 General Election that have not been counted:
12
13
14

15 (1) King County has approximately 95 ballots which may be lawful ballots that
16 were not counted in King County.
17
18

19 (2) According to deposition testimony from the Pierce County Auditor on
20 April 25, 2005, there are 64 uncounted ballots in Pierce County which may be lawful.
21
22

23 (3) According to an April 9 article in the *Seattle Post-Intelligencer*, there are
24 three ballots in Snohomish County which may be lawful that have not been counted
25
26

27 In addition,
28

29 (1) King County did not count approximately 80 lawful provisional ballots
30 because it failed to completely canvass the ballots or to timely process voter registrations
31 given to King County. To the extent WSDCC has been able to ascertain the identifying
32 information on these ballots, it was included in Supplemental Exhibit A, served on April 29.
33 The information contained in Supplemental Exhibit A is confidential under the terms of
34 protective orders entered in this action.
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42 (2) King County did not count approximately 160 lawful absentee ballots timely
43 returned by registered voters because King County lost their voter registrations, though it
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 3

[15934-0906/SL051226.316]

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1 was able to determine that the voters had in fact given such materials to King County in a
2 timely fashion. Identifying information with regard to these voters is attached hereto as
3 Supplemental Exhibit E. The information contained in Supplemental Exhibit E is
4 confidential under the terms of protective orders entered in this action.
5
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7
8 (3) It appears that King County timely received approximately 622 lawful
9 provisional ballots, found a notation in its computer system that the voter's registration
10 apparently had been cancelled and then failed to complete its canvass of the provisional
11 ballot by conducting the investigation required by RCW 29A.08.625(3) into the
12 circumstances of the original cancellation in order to determine whether or not the
13 cancellation was in error. WSDCC's investigation is continuing. To the extent WSDCC has
14 been able to ascertain the identifying information on these ballots, it was included in
15 Supplemental Exhibit B, served on April 29. The information contained in Supplemental
16 Exhibit B is confidential under the terms of protective orders entered in this action.
17
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19 WSDCC has no information relating to whether these uncounted ballots in the 2004
20 General Election included votes in the gubernatorial election and, if so, for which candidate
21 (including write-in candidates) the voter voted. WSDCC's investigation is ongoing and it
22 will further supplement its answer to the extent the investigation uncovers additional
23 responsive information.
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 4

[15934-0006/SL051220.316]

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	(a)	(a)	(a)	(a)	(a)	(a)	(b)	(c)	(d)
	Voter's full name	residence address	phone	voter ID/ registration number	Date of birth	county & precinct	error, etc. you claim caused lawful vote to not be counted	Candidate for whom you claim vote was apparently cast	type of evidence you rely upon to show candidate for whom vote was apparently cast
1	Voter #1								
2	Voter #2								
3	Voter #3								

INTERROGATORY NO. 21: Please:

- (a) identify each unlawful vote you claim was cast in the 2004 election but nonetheless was counted as a result errors, omissions, misconduct, neglect, wrongful acts, irregularities, or improper conduct of elections officials - including, to the extent available to you, the full name of the voter in whose name you claim that vote unlawful vote was cast, that voter's residence address, telephone number, voter ID or registration number, county voting precinct, and date of birth;
- (b) for each vote you identify, briefly state the error, omission, misconduct, neglect, wrongful act, irregularity, or improper conduct you claim caused that unlawful vote to be counted (e.g., provisional ballot that was not validated, undervote that was improperly enhanced, ballot that was improperly duplicated, improper correction of error brought to election official's attention, etc.);
- (c) for each vote you identify, state the candidate for whom you claim that vote was apparently cast in the 2004 Governor's election; and
- (d) for each vote you identify, state every type of direct or circumstantial evidence you rely upon for your claim concerning the gubernatorial candidate for whom that vote was apparently cast (e.g., proportional analysis, statement by the voter, etc.).

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 5

[15934-0906/SL051220.316]

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To facilitate the prompt and orderly evaluation of the unlawful votes you claim were counted in the 2004 Governor's election, please provide your answers in the matrix format illustrated below.

	(a)	(a)	(a)	(a)	(a)	(a)	(b)	(c)	(d)
	Full name of unlawful voter [or other identification of vote if name not available]	residence address [if voter name available]	phone [if voter name available]	voter ID/ registration number [if voter name available]	date of birth [if applicable]	county & precinct of that vote	Error, etc. you claim caused that unlawful vote to be counted	candidate for whom you claim that unlawful vote was apparently counted	type of evidence you rely upon to show candidate for whom that unlawful vote was apparently counted
1	Voter #1								
2	Voter #2								
3	Voter #3								

SECOND SUPPLEMENTAL ANSWER:

(1) See second supplemental answer to Interrogatory Nos. 25 and 29.

Felon Voters

The Election Contest Petition states "Respondents counted votes by felons" (1st para., Sec. IV), that respondents' wrongful acts include the "counting of votes of convicted felons who have not had their civil rights restored" (Sec. VI.A.3), and that "convicted felons who have not had their civil rights restored voted and had their votes counted" (Sec. VI. B. 3).

The following Interrogatory asks you to fully disclose your facts (if any) relating to those allegations in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23 above.

INTERROGATORY NO. 25: With respect to the 2004 Governor's election,

please:

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 6

[15934-0006/SL051220.316]

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- (a) state the name of every county in which you claim votes by convicted felons (who have not had their civil rights restored) were counted for Governor;
- (b) for each county you list, state the total number of such felon votes you claim were counted for Governor;
- (c) state whether you claim any of the gubernatorial candidates or their campaigns were in any way responsible for the counting of votes by convicted felons (who have not had their civil rights restored) - and if you claim any of them were, state for each candidate or campaign exactly what you claim that responsibility was;
- (d) identify every person with any knowledge concerning your answer to this Interrogatory, along with a brief description of the subject matter of that person's knowledge; and
- (e) identify every document that supports, is inconsistent with, or otherwise relates to your answer to this Interrogatory.

SECOND SUPPLEMENTAL ANSWER:

(a) WSDCC's investigation is continuing, but it has determined to date that the voters identified in the attached Supplemental Exhibit C appear to be felons who voted in the 2004 General Election and for whom WSDCC has been unable to date to locate evidence of the restoration of voting rights to the felon. The information contained in Supplemental Exhibit C is confidential under the terms of protective orders entered in this action. Supplemental Exhibit C includes the following numbers of felons who voted in the following 33 counties and for whom WSDCC has been unable to date to locate evidence of the restoration of voting rights to the felon:

- Benton – 37
- Chelan – 14

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
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THERE TO - 7

[15934-0906/SL051220.316]

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- Clallam – 9
- Clark – 43
- Cowlitz – 3
- Douglas – 6
- Ferry – 6
- Franklin – 6
- Garfield – 1
- Grant – 35
- Grays Harbor – 1
- Island – 5
- Jefferson – 2
- King – 44
- Kitsap – 23
- Kittitas – 6
- Klickitat – 2
- Lewis – 17
- Lincoln – 3
- Mason – 1
- Okanogan – 10
- Pacific – 1
- Pierce – 51
- Skagit – 11
- Skamania – 1

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 8

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1 Snohomish – 36

2 Spokane – 74

3 Stevens – 1

4 Thurston – 26

5 Walla Walla – 7

6 Whatcom – 6

7 Whitman – 6

8 Yakima – 50

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16 (b) WSDCC does not claim that any of the gubernatorial candidates or their
17 campaigns were in any way responsible for the counting of any vote by any convicted felon
18 who did not have the right to vote.
19
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22
23

24 **Counting Of Provisional Ballots**

25 *The Election Contest Petition states that "many provisional ballots were counted*
26 *without any determination being made that the voter was entitled to vote or had not already*
27 *voted" (Sec. VI B.2)).*

28 *The following Interrogatory asks you to fully disclose your facts (if any) relating to*
29 *those allegations in addition to the facts you disclosed in your answers to Interrogatory Nos.*
30 *13-23 above.*
31
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33
34 **INTERROGATORY NO. 29:** With respect to the 2004 Governor's election,
35 please:
36

- 37
38
39 (a) state the name of every county in which you claim provisional ballots
40 were counted without a determination being made that the voter was
41 entitled to vote or had not already voted;
42
43 (b) for each county you list, state the total number of provisional ballots you
44 claim were counted without a determination being made that the voter
45 was entitled to vote or had not already voted;
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 9

[15934-0906/SL051220.316]

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- 1 (c) state whether you claim any of the gubernatorial candidates or their
2 campaigns were in any way responsible for the counting of provisional
3 ballots without determining that the voter was entitled to vote or had not
4 already voted - and if you claim any of them were, state for each
5 candidate or campaign exactly what you claim that responsibility was;
6
7 (d) identify every person with any knowledge concerning your answer to this
8 Interrogatory, along with a brief description of the subject matter of that
9 person's knowledge; and
10
11 (e) identify every document that supports, is inconsistent with, or otherwise
12 relates to your answer to this Interrogatory.
13
14

15 **SECOND SUPPLEMENTAL ANSWER:**
16

17 WSDCC's investigation is ongoing, but to date it has determined that the following
18 numbers of voters in the following 14 counties apparently submitted provisional ballots to
19 county election officials and that such ballots were counted by election officials without first
20 completing the verification required by WAC 434-253-047:
21
22

23 Adams – 117
24
25 Benton – 37
26
27 Clark – 1
28
29 Cowlitz – 17
30
31 Island – 27
32
33 Jefferson – 16
34
35 Kittitas – 25
36
37 Pierce – 164
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39 Skagit – 1
40
41 Spokane – 3
42
43 Stevens – 400
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 10

[15934-0906 SL051220.316]

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1 Walla Walla – 331

2 Whatcom – 17

3 Whitman – 783

4
5
6 To the extent identification information has been provided by the counties for each
7 individual voter, that information is provided on the attached Supplemental Exhibit D. The
8 information contained in Supplemental Exhibit D is confidential under the terms of
9 protective orders entered in this action. Counsel for all parties who attended the depositions
10 of election officials in Adams, Benton, Cowlitz, Island, Jefferson, Kittitas, Pierce, Spokane,
11 Stevens, Walla Walla, Whatcom and Whitman county have knowledge of these errors.
12 WSDCC does not contend that any candidate or campaign was responsible for the counting
13 of these ballots prior to verification. WSDCC's investigation is ongoing and it will
14 supplement its answer with the names of voters whose provisional ballots were wrongly
15 counted by other counties identified in WSDCC's original answer, as soon as WSDCC
16 receives the underlying documents from those counties necessary to make that disclosure.
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31 Objections and Responses submitted this 3rd day of May, 2005.

32
33
34 **PERKINS COIE LLP**

35
36
37 By 

38 Kevin J. Hamilton, WSBA No. 15648

39 William C. Rava, WSBA No. 29948

40 Attorneys for Intervenor Respondent

41 Washington State Democratic Central

42 Committee
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' SECOND
SUPPLEMENTAL RESPONSES
THERE TO - 11

[15934-0006/SL051220.316]

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