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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 LIBERTARIAN
PARTY OF WASHINGTON
STATE**

*["Secretary of State's
Discovery Requests To The
Libertarians"]*

TO: Intervenor Respondent Libertarian Party of Washington State,
AND TO: Richard Shepard, Shepard Law Office (richard@shepardlawoffice.com), their attorneys.

RESPONDENT SECRETARY OF STATE'S DISCOVERY
REQUESTS TO LIBERTARIANS - 1

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 INTRODUCTION

2 *The Respondent Secretary of State is serving virtually identical discovery requests on*
3 *the Petitioners and political parties in this case. These requests require them to fully disclose*
4 *their claims and facts so this election contest can proceed to a prompt, orderly, and impartial*
5 *resolution based upon a full consideration of the claims and legally relevant facts being*
6 *contested by the Petitioners and political parties in this case.*

7 *Given the purpose of these discovery requests, as well as the significant amount of*
8 *investigation and discovery that the Petitioners and political parties have for many months been*
9 *doing with respect to their claims in this case, the Petitioners and political parties should have*
10 *no difficulty providing full and candid answers so this election contest can promptly proceed to*
11 *an orderly resolution on the merits. (See also, e.g., Civil Rule 11 and Washington State*
12 *Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993).)*

13 *If counsel for the Petitioners or a political party nonetheless has an objection to*
14 *answering some part of these discovery requests, the undersigned counsel for the Secretary of*
15 *State will gladly make themselves available for a discovery conference before these requests'*
16 *April 7 deadline in order to work out a fair resolution to that objection so answers can be timely*
17 *provided without unnecessary delays and expense.*

18 FIVE GENERAL REMINDERS

19 1. Interrogatories: Since the Chelan County Superior Court has ruled that the Civil
20 Rules apply in this case, the Respondent Secretary of State is serving these Interrogatories upon
21 you pursuant to Civil Rule 33. You are reminded that Rule 33 requires you to answer each of
22 these Interrogatories under oath, and to then deliver those sworn answers to the undersigned
23 attorney's Seattle, Washington office on or before Thursday, April 7, 2005.

24 These Interrogatories cover and include all information and knowledge available to you.
25 This includes all information and knowledge available to any person who obtained information
26 for you or on your behalf— including your agents, investigators, consultants, and
representatives.

27 2. Production Requests: Since the Chelan County Superior Court has ruled that the
28 Civil Rules apply in this case, the Respondent Secretary of State is serving these Production
29 Requests upon you pursuant to Civil Rule 34. You are reminded that Rule 34 requires you to
30 find the "documents" described in these Production Requests and produce them at the
31 undersigned attorney's Seattle, Washington office to be inspected and copied at 9:00 a.m. on
32 Thursday, April 7, 2005.

1 These Production Requests cover and include all “documents” of any nature which are
2 or have been within your possession, custody, or control. This includes all the documents of
3 any person who obtained information for you or on your behalf– including your agents,
4 investigators, consultants, and representatives. All “documents” shall be produced in the same
5 folders, files, and form in which they are maintained by the person who holds or maintains those
6 documents. Documents attached to each other shall not be separated.

7 3. Objections: Since the Chelan County Superior Court has ruled that the Civil
8 Rules apply in this case, you are reminded that if you object to producing any of the requested
9 “documents”, or object to answering any part of any Interrogatory, then you must fully state
10 your objection and all the factual and legal reasons supporting your objection. If you object on
11 the ground of privilege, you must fully state the nature and extent of the privilege you claim. If
12 you object to answering only part of a Production Request or Interrogatory, you must identify
13 the specific part to which you object and answer the remainder. ANY OBJECTION WHICH IS
14 NOT SO ASSERTED OR IS NOT TIMELY SERVED WILL BE DEEMED WAIVED. **You**
15 **are also expressly reminded of your discovery response obligations under *Washington***
16 ***State Physicians Ins. Exchange & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054**
17 **(1993), and its progeny.**

18 4. Supplementation: Since the Chelan County Superior Court has ruled that the
19 Civil Rules apply in this case, you are reminded that Rule 26(e) requires you to supplement your
20 Interrogatory answers and Production Request responses after you have served your initial
21 answers and responses.

22 These Production Requests and Interrogatories are continuously renewed to and through
23 the hearing of this case. Therefore, if you ever obtain any information that materially affects
24 any Interrogatory answer or Production Request response so that the affected answer or
25 response is no longer true, you are required to promptly correct that answer or response. Your
26 failure to do that will be a knowing concealment of the truth.

RESPONDENT SECRETARY OF STATE’S DISCOVERY
REQUESTS TO LIBERTARIANS - 3

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SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 5. Sanctions. Since the Chelan County Superior Court has ruled that the Civil
2 Rules apply in this case, you are reminded that the Court may severely sanction you if you fail
3 to comply with any of the Civil Rules. For example, Rule 37 authorizes the Court to exclude
4 evidence favorable to you, to strike your pleadings and enter a default judgment against you,
5 and order you to pay the expenses and attorney fees of the party submitting these discovery
6 requests.

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9 **SEVEN DEFINITIONS**

10 The following paragraphs define several of the terms used in these discovery requests so
11 you cannot claim in good faith to have misunderstood what these discovery requests are
12 requesting. Therefore, please read these definitions carefully.

13 (a) “Petitioners” means Timothy Borders, Thomas Canterbury, Tom Huff, Margie
14 Ferris, Paul Elvig, Edward Monaghan, Christopher Vance, and the Rossi For Governor
15 Campaign.

16 (b) “you” & “your” mean the Libertarian Party of Washington State.

17 (c) “person” means humans as well as entities. For example, the term “person”
18 includes any type of candidate committee, political party, company, partnership, association,
19 organization, and non-profit corporation.

20 (d) “document” means any written, typed, graphic, recorded, or electronically
21 stored matter whatsoever. The term “document” accordingly includes emails, letters, telefaxes,
22 pictures, files, summaries, spreadsheets, notes, drafts, and working papers.

23 If any information is on a computer disk, tape, or other memory or storage device, the
24 term “document” means (i) a printout of that information in hard-copy form, or (ii) a CD or
25 DVD with a complete, useable copy of all of that information. Thus, for example, the term
26

1 “document” includes a hard-copy printout, CD, or DVD of all emails responsive to these
2 discovery requests.

3 (e) **“identify”**.

4 (i) When applied to a human, the term “identify” means state their full name and,
5 to the extent reasonably available to you, the phone number, email address, and
6 residence address at which they can most easily be contacted.

7 (ii) When applied to an entity, the term “identify” means state that entity’s full
8 name and, to the extent reasonably available to you, the phone number, email
9 address, and business address at which it can most easily be contacted.

10 (iii) When applied to a document, the term “identify” means state its general
11 description (e.g., letter, handwritten note, report, etc.), its date, its addressee, its
12 author, a brief summary of its general contents and, to the extent reasonably
13 available to you, the persons receiving copies of that document. *Alternatively,*
14 *if that document is being produced with document production numbers on it,*
15 *you may simply state the document production numbers.*

16 (f) **“and” & “or”**. The words “and” and “or” should not be interpreted to exclude
17 any information from any Interrogatory answer or Production Request response. Both words
18 should therefore be interpreted to mean “and/or” when necessary to prevent such exclusion.

19 (g) **Singular/Plural**. The use of the singular or plural form of a word in any
20 Interrogatory or Production Request should not be construed to exclude any information from
21 any Interrogatory answer or Production Request response.

22 **INTERROGATORIES & PRODUCTION REQUESTS**

23 [following pages]

1 **Errors, Etc. Alleged Against The Respondent Secretary Of State**

2 Without specifying the "respondents" to which it refers, the Election Contest Petition
3 alleges that respondents committed "errors", "omissions", "mistakes", "misconduct",
4 "neglect", and "other wrongful acts" – e.g., that this election is being contested "because of
5 the errors, omissions, misconduct, neglect, and other wrongful acts of respondent election
6 officials" (1st para., Sec. IV), because "Respondents ... have made errors and been negligent,
and they have committed other wrongful acts" (2nd para., Sec. IV), because "respondents have
committed errors, omissions, mistakes, neglect, and other wrongful acts" (Sec. VI.A), and
because of "Respondents' errors, omissions, misconduct, neglect, and other wrongful acts"
(Sec. VI.B-C). The following Interrogatories ask you to disclose your claims and facts (if any)
with respect to one of those respondents – i.e., the respondent Secretary of State.

7 **INTERROGATORY NO. 1:** Do you claim that the respondent Secretary of State
8 committed any error, omission, mistake, misconduct, neglect, or wrongful act relating to the
9 2004 Governor's election?

10 **ANSWER:**

11 **INTERROGATORY NO. 2:** If your answer to the preceding Interrogatory was
12 anything other than an unequivocal "no", then for each error, omission, mistake, misconduct,
13 neglect, or wrongful act you claim the respondent Secretary of State committed, please:

- 14 (a) state what you claim that error, omission, mistake, misconduct, neglect, or wrongful act
15 was;
- 16 (b) state whether you claim that error, omission, mistake, misconduct, neglect, or wrongful
17 act caused Ms. Gregoire to be declared duly elected even though she did not receive the
highest number of legal votes; and
- 18 (c) if you claim it did, explain exactly how you claim it did.

19 **ANSWER:**

20 **INTERROGATORY NO. 3:** Please identify every person with any knowledge
21 concerning your answer to Interrogatory Nos. 1-2 above, along with a brief description of the
22 subject matter of that person's knowledge.

23 **ANSWER:**

24 **INTERROGATORY NO. 4:** Please identify every document that supports, is
25 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 1-2 above.

26 **ANSWER:**

1 **Failure To Perform Obligations Alleged Against The Respondent Secretary Of State**

2 *Without specifying the "respondents" to which it refers, the Election Contest Petition*
3 *states that "Respondents and their agents have filed to perform their obligations under the*
4 *constitutions of the State of Washington and the United States and elections laws" (2nd para.,*
5 *Sec. IV), and that "Respondents ... failed to implement procedures to avoid mistakes, errors,*
6 *and alteration or submission of invalid votes" (3rd para., Sec. IV). The following*
7 *Interrogatories ask you to disclose your claims and facts (if any) with respect to one of those*
8 *respondents – i.e., the respondent Secretary of State.*

9 **INTERROGATORY NO. 5:** Do you claim the respondent Secretary of State failed to
10 perform any obligation with respect to the 2004 Governor's election?

11 **ANSWER:**

12 **INTERROGATORY NO. 6:** If your answer to the preceding Interrogatory was
13 anything other than an unequivocal "no", then for each obligation you allege the respondent
14 Secretary of State failed to perform, please:

- 15 (a) identify that obligation;
- 16 (b) identify the specific constitutional provision or specific law which you claim created
17 that obligation;
- 18 (c) state how you claim the respondent Secretary of State failed to perform that obligation;
- 19 (d) state whether you claim that failure by the Secretary of State caused Ms. Gregoire to be
20 declared duly elected even though she did not receive the highest number of legal votes;
21 and
- 22 (e) if you claim it did, explain exactly how you claim it did.

23 **ANSWER:**

24 **INTERROGATORY NO. 7:** Please identify every person with any knowledge
25 concerning your answer to Interrogatory Nos. 5-6 above, along with a brief description of the
26 subject matter of that person's knowledge.

ANSWER:

INTERROGATORY NO. 8: Please identify every document that supports, is
 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 5-6 above.

ANSWER:

1 **Alleged Error In The Secretary Of State's Certification**

2 *The Election Contest Petition states that "an error has occurred in the Secretary of*
3 *State's certification of the election returns" (Sec. VI.F). The following Interrogatories ask you*
4 *to disclose your claims and facts (if any) with respect to that allegation concerning the*
5 *respondent Secretary of State.*

6 **INTERROGATORY NO. 9:** Do you claim the respondent Secretary of State
7 committed any error in his certification of the election returns for the 2004 Governor's election?

8 **ANSWER:**

9 **INTERROGATORY NO. 10:** For each error you claim has occurred in the Secretary
10 of State's certification of the election returns for the 2004 Governor's election, please:

- 11 (a) state what you claim that error was;
- 12 (b) state whether you claim the Secretary of State caused or is responsible for that error;
- 13 (c) if you claim the Secretary of State caused or was responsible for that error, please
14 explain exactly how you claim he caused or was responsible for that error;
- 15 (d) state whether you claim that error caused Ms. Gregoire to be declared duly elected even
16 though she did not receive the highest number of legal votes; and
- 17 (e) if you claim if did, explain exactly how you claim it did.

18 **ANSWER:**

19 **INTERROGATORY NO. 11:** Please identify every person with any knowledge
20 concerning your answer to Interrogatory Nos. 9-10 above, along with a brief description of the
21 subject matter of that person's knowledge.

22 **ANSWER:**

23 **INTERROGATORY NO. 12:** Please identify every document that supports, is
24 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 9-10 above.

25 **ANSWER:**

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INTERROGATORY NO. 14: Please:

- (a) identify the voters in whose name you claim illegitimate, invalid, or illegal votes were cast in the 2004 election – 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 voter you identify, briefly state the reason you claim their vote was illegitimate, invalid, or illegal (e.g., felon, deceased, voted twice, cast by person other than the registered voter, etc.);
- (c) for each voter you identify, state the candidate for whom you claim that voter’s vote was apparently cast in the 2004 Governor’s election;
- (d) for each voter you identify, state every type of direct or circumstantial evidence you rely upon for your claim concerning the gubernatorial candidate for whom that voter’s vote was apparently cast (e.g., proportional analysis, voter testimony, etc.).

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

ANSWER:

	(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	reason you claim vote illegal	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								

1 **INTERROGATORY NO. 15:** Please identify every person with any knowledge
2 concerning your answer to the Interrogatory Nos. 13-14 above, along with a brief description of
3 the subject matter of that person's knowledge.

4 **ANSWER:**

5 **INTERROGATORY NO. 16:** Please identify every document that supports, is
6 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 13-14 above.

7 **ANSWER:**

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1 **Errors, Etc. Causing Fewer Lawful Votes To Be Counted For Rossi Than Gregoire**

2 *The Election Contest Petition states that "As a result of Respondents' errors, omissions,*
3 *misconduct, neglect, and other wrongful acts, Respondents failed to count more lawful votes for*
4 *Candidate Rossi than the number of votes separating the candidates" (Sec. VI.C), that "The*
5 *number of individuals who state that they voted for Mr. Rossi but their ballots were wrongfully*
6 *rejected by Respondents exceeds the number of votes certified by the Secretary of State as*
7 *separating the two candidates by more than double" (Sec. VI.C), and that "the votes of lawfully*
8 *registered voters were not counted, and the failure of the Respondents to count them, when*
9 *presented with evidence of Respondents' errors, was arbitrary, capricious, wrongful, and a*
10 *violation of their obligations under Washington's election laws" (5th para., Sec. VI).*

11 *In addition to the statements Petitioners refer to by individuals whose votes for*
12 *Mr. Rossi were rejected, their February 22 answers to the intervenor Democrats' discovery*
13 *requests indicate that Petitioners base their contentions in this case concerning the candidate*
14 *for whom votes were cast on facts such as direct evidence (e.g., "the specific ballots cast*
15 *illegally" and "testimony from the illegal voters") and circumstantial evidence (e.g., "a*
16 *proportional analysis", "proportional allocation" by precinct, or "media reports"). See the*
17 *Petitioner Rossi Campaign's February 22 answers to the Democrats' Interrogatory Nos. 3, 5, 7,*
18 *9, 14, & 16.*

19 *The following Interrogatories ask you to fully disclose your facts concerning the errors,*
20 *omissions, misconduct, neglect, and other wrongful acts of elections officials alleged in this*
21 *election contest.*

22 **INTERROGATORY NO. 17:** Do you contend that errors, omissions, misconduct,
23 neglect, wrongful acts, irregularities, or improper conduct of elections officials caused
24 Ms. Gregoire to be declared duly elected although she did not receive the highest number of
25 legal votes?
26

ANSWER:

1 **INTERROGATORY NO. 18:** With respect to the 2004 Governor's election, please:

- 2 (a) state the total number of lawful votes for **Mr. Rossi** that you claim were not counted as
3 a result of errors, omissions, misconduct, neglect, wrongful acts, irregularities, or
4 improper conduct of elections officials;
- 5 (b) state the total number of unlawful votes for **Mr. Rossi** that you claim were counted as a
6 result of errors, omissions, misconduct, neglect, wrongful acts, irregularities, or
7 improper conduct of elections officials; and
- 8 (c) state the total number of lawful votes you claim were cast for **Mr. Rossi** in the 2004
9 governor's election.;

10 **ANSWER:**

11 **INTERROGATORY NO. 19:** With respect to the 2004 Governor's election, please:

- 12 (a) state the total number of lawful votes for **Ms. Gregoire** that you claim were not
13 counted as a result of errors, omissions, misconduct, neglect, wrongful acts,
14 irregularities, or improper conduct of elections officials;
- 15 (b) state the total number of unlawful votes for **Ms. Gregoire** that you claim were counted
16 as a result of errors, omissions, misconduct, neglect, wrongful acts, irregularities, or
17 improper conduct of elections officials; and
- 18 (c) state the total number of lawful votes you claim were cast for **Ms. Gregoire** in the 2004
19 governor's election.;

20 **ANSWER:**

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.).

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

ANSWER:

	(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								

