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8 SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

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

12 Petitioners,

13 v.

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

21 Respondents,

22 v.

23 Washington State Democratic Central Committee,
24 Intervenor Respondents,

25 v.

26 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 PETITIONERS

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

TO: Petitioners Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, Christopher Vance, and the Rossi For Governor Campaign,

AND TO: Davis Wright Tremaine LLP, Harry Korrell, and Robert Maguire, their attorneys.

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

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

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.

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

2 Without specifying the "respondents" to which you refer, your Election Contest Petition
3 states that "Respondents and their agents have failed 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 *Your 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 with respect to your allegation concerning the respondent*
5 *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:**

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

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

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

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.).

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.

ANSWER:

	(a)	(a)	(a)	(a)	(a)	(a)	(b)	(c)	(d)
	full name of unlawful voter/for other identification of vote if name not available	residence address	phone	voter ID/registration number	date of birth	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								

1 **INTERROGATORY NO. 22:** Please identify every person with any knowledge
2 concerning your answer to Interrogatory Nos. 17-21 above, along with a brief description of the
3 subject matter of that person's knowledge.

4 **ANSWER:**

5 **INTERROGATORY NO. 23:** Please identify every document that supports, is
6 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 17-21 above.

7 **ANSWER:**

1 More Votes Than Voters

2 Your Election Contest Petition states that "Respondents counted many more votes than
3 were cast by legitimate, registered voters" (2nd para., Sec. IV), that respondents' wrongful acts
4 include "employing procedures that resulted in the counting of votes far in excess of the number
5 of lawfully registered electors who participated in the election" (Sec. VI.A.1), and that "many,
6 potentially thousands, more votes were counted than were cast by lawfully registered voters"
7 (Sec. VI.B.1).

8 The following Interrogatory asks you to fully disclose your facts relating to those
9 allegations in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23
10 above.

11 **INTERROGATORY NO. 24:** With respect to the 2004 Governor's election, please:

- 12 (a) state the name of every county in which you claim more votes were counted than were
13 cast by lawfully registered voters;
- 14 (b) for each county you list, state the total number of such votes you claim were counted in
15 excess of the number of votes cast by lawfully registered voters;
- 16 (c) state whether you claim any of the gubernatorial candidates or their campaigns were in
17 any way responsible for the counting of more votes than were cast by lawfully
18 registered voters in the 2004 Governor's election – and if you claim any of them were,
19 explain for each candidate or campaign exactly what you claim that responsibility was;
- 20 (d) identify every person with any knowledge concerning your answer to this Interrogatory,
21 along with a brief description of the subject matter of that person's knowledge; and
- 22 (e) identify every document that supports, is inconsistent with, or otherwise relates to your
23 answer to this Interrogatory.

24 **ANSWER:**

1 Felon Voters

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

6 The following Interrogatory asks you to fully disclose your facts relating to those
7 allegations in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23
8 above.

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

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

22 **ANSWER:**

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1 Dead Voters

2 Your Election Contest Petition states that "Respondents counted ... votes cast in the
3 name of deceased persons" (3rd para., Sec. IV), that respondents' wrongful acts include the
4 "counting of invalid votes submitted in the name of persons who died before the election"
5 (Sec. VI.A.4), and that "invalid votes were counted in the name of deceased persons"
6 (Sec. VI.B.4).

7 The following Interrogatory asks you to fully disclose your facts relating to those
8 allegations in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23
9 above.

10 **INTERROGATORY NO. 26:** With respect to the 2004 Governor's election, please:

- 11 (a) state the name of every county in which you claim votes submitted in the name of
12 persons who died before the election were counted for Governor;
- 13 (b) for each county you list, state the total number of such votes you claim were counted
14 for Governor;
- 15 (c) state whether you claim any of the gubernatorial candidates or their campaigns were in
16 any way responsible for the counting of votes submitted in the name of persons who
17 died before the election – and if you claim any of them were, state for each candidate or
18 campaign exactly what you claim that responsibility was;
- 19 (d) identify every person with any knowledge concerning your answer to this Interrogatory,
20 along with a brief description of the subject matter of that person's knowledge; and
- 21 (e) identify every document that supports, is inconsistent with, or otherwise relates to your
22 answer to this Interrogatory. (Be sure to include the death certificate or other
23 documentation that shows the date on which you claim the voter died.)

24 **ANSWER:**

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Military & Absentee Ballots

Your Election Contest Petition states that respondents' wrongful acts included "failing to ensure that military overseas and other absentee voters received absentee ballots in a timely manner" (Sec. VI.A.6), and that "military overseas and other absentee voters may have been disenfranchised by administrative error" (Sec. VI.B.8).

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

INTERROGATORY NO. 28: With respect to the 2004 Governor's election, please:

- (a) state the name of every county from which you claim military overseas and other absentee voters did not timely receive their ballots – and for each county you list, state whether you claim that county mailed those voters' ballots later than any state or federal law deadlines;
- (b) state the name of every county for which you claim military overseas and other absentee voters were disenfranchised by administrative error – and for each county, state exactly what that administrative error was;
- (c) for each county you list, state the total number of military overseas and other absentee voters you claim were disenfranchised or did not have their ballots counted for Governor;
- (d) state whether you claim any of the gubernatorial candidates or their campaigns were in any way responsible for any untimely receipt or administrative error relating to military overseas and other absentee ballots – and if you claim any of them were, state for each candidate or campaign exactly what you claim that responsibility was;
- (e) 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
- (f) identify every document that supports, is inconsistent with, or otherwise relates to your answer to this Interrogatory.

ANSWER:

1 Counting Of Provisional Ballots

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

5 The following Interrogatory asks you to fully disclose your facts relating to those
6 allegations in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23
7 above.

8 **INTERROGATORY NO. 29:** With respect to the 2004 Governor's election, please:

- 9 (a) state the name of every county in which you claim provisional ballots were counted
10 without a determination being made that the voter was entitled to vote or had not
11 already voted;
- 12 (b) for each county you list, state the total number of provisional ballots you claim were
13 counted without a determination being made that the voter was entitled to vote or had
14 not already voted;
- 15 (c) state whether you claim any of the gubernatorial candidates or their campaigns were in
16 any way responsible for the counting of provisional ballots without determining that the
17 voter was entitled to vote or had not already voted – and if you claim any of them were,
18 state for each candidate or campaign exactly what you claim that responsibility was;
- 19 (d) identify every person with any knowledge concerning your answer to this Interrogatory,
20 along with a brief description of the subject matter of that person's knowledge; and
- 21 (e) identify every document that supports, is inconsistent with, or otherwise relates to your
22 answer to this Interrogatory.

23 **ANSWER:**

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1 Multiple Voters

2 *Your Election Contest Petition states that "invalid votes that were submitted by people*
3 *who submitted more than one ballot were improperly counted" (Sec. VI.B.6).*

4 *The following Interrogatory asks you to fully disclose your facts relating to that*
5 *allegation in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23*
6 *above.*

7 **INTERROGATORY NO. 30:** With respect to the 2004 Governor's election, please:

- 8 (a) state the name of every county in which you claim an invalid vote submitted by a
9 person who submitted more than one ballot was improperly counted;
- 10 (b) for each county you list, state the total number of such votes you claim were counted
11 for Governor;
- 12 (c) state whether you claim any of the gubernatorial candidates or their campaigns were in
13 any way responsible for the improper counting of invalid votes submitted by people
14 who submitted more than one ballot – and if you claim any of them were, state for each
15 candidate or campaign exactly what you claim that responsibility was;
- 16 (d) identify every person with any knowledge concerning your answer to this Interrogatory,
17 along with a brief description of the subject matter of that person's knowledge; and
- 18 (e) identify every document that supports, is inconsistent with, or otherwise relates to your
19 answer to this Interrogatory.

20 **ANSWER:**

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1 Overvote & Undervote Procedures

2 *Your Election Contest Petition states that "Respondents failed to implement uniform*
3 *procedures for the canvassing of overvotes and undervotes and some of them changed their*
4 *procedures in the middle of the election and recount" (4th para., Sec. IV).*

5 *The following Interrogatory asks you to fully disclose your facts relating to this*
6 *allegation in addition to the facts you disclosed in your answers to Interrogatory Nos. 13-23*
7 *above.*

8 **INTERROGATORY NO. 31:** With respect to the 2004 Governor's election, please:

- 9 (a) state the name of every county for which you claim there was a lack of uniform
10 procedures for the canvassing of overvotes and undervotes on ballots;
- 11 (b) state the name of every county you claim changed its procedures for the canvassing of
12 overvotes and undervotes on ballots during the election and recount;
- 13 (c) for each county you list, state the total number of ballots you claim were not properly
14 counted due to that county's failure to implement uniform or consistent procedures for
15 the canvassing of overvotes and undervotes;
- 16 (d) state whether you claim any of the gubernatorial candidates or their campaigns were in
17 any way responsible for the failure to implement uniform or consistent procedures for
18 the canvassing of overvotes and undervotes in the 2004 Governor's election – and if
19 you claim any of them were, state for each candidate or campaign exactly what you
20 claim that responsibility was;
- 21 (e) identify every person with any knowledge concerning your answer to this Interrogatory,
22 along with a brief description of the subject matter of that person's knowledge; and
- 23 (f) identify every document that supports, is inconsistent with, or otherwise relates to your
24 answer to this Interrogatory.

25 **ANSWER:**

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Obscuring Original Marks On Ballots

Your Election Contest Petition states that "respondents violated Washington law by marking on the ballots in such a manner as to obscure the original marks by the voter, making it impossible to review what the voter's intent was" (4th para., Sec. IV), and that the respondents' wrongful acts include "violating the provisions of Washington election law regarding the duplication and enhancement of ballots by marking on ballots in ways that permanently obscured the original marks by the voters making it impossible to now discern voters' intent" (Sec. VI.A.11).

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

INTERROGATORY NO. 32: With respect to the 2004 Governor's election, please:

- (a) state the name of every county in which you claim ballots were marked in such a manner as to obscure the original marks by the voter;
- (b) for each county you list, state the total number of ballots you claim were marked in such a manner as to obscure the original marks by the voter with respect to the Governor's race;
- (c) state whether you claim any of the gubernatorial candidates or their campaigns were in any way responsible for the marking of ballots in such a manner as to obscure the original marks by the voter – 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.

ANSWER:

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Improperly Secured Ballots

Your Election Contest Petition states that "Respondents failed to secure properly certain absentee, provisional, and other ballots" and that "the improperly secured ballots were not properly counted" (3rd para., Sec. IV).

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

INTERROGATORY NO. 33: With respect to the 2004 Governor's election, please:

- (a) state the name of every county in which you claim ballots were improperly secured and not properly counted;
- (b) for each county you list, state the total number of ballots you claim were improperly secured and not properly counted for Governor;
- (c) state whether you claim any of the gubernatorial candidates or their campaigns were in any way responsible for the improper security of ballots or those ballots being improperly counted – 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.

ANSWER:

1 *Your Experts*

2
3 **INTERROGATORY NO. 34:** Please identify all expert witnesses you intend to call
4 at time of trial or to submit any testimony or evidence you use in this case, and separately state
5 as to each such expert witness:

- 6 (a) the subject matter(s) of that witness's expected testimony and evidence;
- 7 (b) the substance of the facts and opinions to which that witness is expected to submit any
8 testimony or evidence;
- 9 (c) a summary of the grounds and basis for each opinion to which that witness is expected
10 to submit any testimony or evidence; and
- 11 (d) the identity of all documents reviewed or relied upon by that witness in forming the
12 basis for the opinions and facts about which that witness is expected to submit any
13 testimony or evidence.

14 **ANSWER:**

15 **REQUEST FOR PRODUCTION NO. 1:** Please produce the documents you were
16 asked to identify in the preceding Interrogatory.

17 **RESPONSE:**

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1 Other Persons With Knowledge

2
3 **INTERROGATORY NO. 35:** To the extent not done in your answers to the other
4 Interrogatories in this set of discovery requests, please identify all persons with knowledge of
5 any of the following:

- 6 (a) your responses and answers to these discovery requests;
7 (b) any of the documents requested in these discovery requests; or
8 (c) matters alleged in the Election Contest Petition or your pleadings in this case.

9 For each person identified, please state the subject matters about which that person has
10 knowledge.

11 **ANSWER:**

1 Documents

2
3 **REQUEST FOR PRODUCTION NO. 2:** To the extent not already done in response
4 to the above Request For Production No. 1, please produce all documents you were asked to
5 identify in the Interrogatories in this set of discovery requests.

6 **RESPONSE:**

7
8 **INTERROGATORY NO. 36:** If any document requested in these discovery requests
9 was, but no longer is, in existence, in your possession, or subject to your custody or control,
10 please identify that document, explain the circumstances and date of its disposition, and identify
11 all persons with any knowledge about or involvement in that disposition.

12 **ANSWER:**

13
14 **INTERROGATORY NO. 37:** If you contend that any document responsive to any
15 Request For Production or Interrogatory is privileged, in whole or in part, or otherwise object to
16 its production, then with respect to each such document please:

- 17 (a) state fully the reasons for all objections and privileges you assert;
- 18 (b) identify the persons having knowledge of the factual basis (if any) upon which that
19 privilege or other objection is asserted; and
- 20 (c) identify that document and all persons who have ever seen it, along with all additional
21 information you are willing to disclose with respect to that document in order for the
22 respondent Secretary of State to determine whether or not to file a motion to compel.

23 **ANSWER:**

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26

1 Persons Responding To These Discovery Requests

2
3 **INTERROGATORY NO. 38:** Please identify each person responsible for supplying
4 any part of your answers or responses to this set of discovery requests, and state the parts for
5 which each such person is responsible.

6 **ANSWER:**

7
8 **INTERROGATORY NO. 39:** Did each of the persons you were asked to identify in
9 the preceding Interrogatory read the Introduction, Five General Reminders, and Seven
10 Definitions at the beginning of these discovery requests? If your answer is “no”, please identify
11 the persons who did not read the Introduction, General Reminders, and Definitions, and state all
12 of that person’s reasons for failing to read them.

13 **ANSWER:**

Petitioners' Votes

INTERROGATORY NO. 40: Paragraph VI.G.2 of your Election Contest Petition states that “the valid votes of Petitioners were either not counted or diluted”. Please:

- (a) identify the Petitioners whose valid votes you claim were not counted (if any);
- (b) 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
- (c) identify every document that supports, is inconsistent with, or otherwise relates to your answer to this Interrogatory.

ANSWER:

INTERROGATORY NO. 41: The second paragraph of Section V of your Election Contest Petition states that Petitioner Thomas L. Canterbury “suffered harm in Chelan County by the actions of Chelan County and its auditor in Chelan County.” Please:

- (a) state every harm in Chelan County that you claim Petitioner Canterbury suffered;
- (b) state the actions by Chelan County which you claim caused that harm;
- (c) state the actions by the Chelan County auditor which you claim caused that harm;
- (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.

ANSWER:

1 Clarifying Your Petition's Vague Legal Claims

2 **INTERROGATORY NO. 42:** The seventh paragraph of Section IV of your Election
3 Contest Petition states that “the court should also order the implementation of procedures to
4 prevent the recurrence of the errors, mistakes, neglect, and wrongful acts that plagued this
5 contested election.” Please:

- 6 (a) disclose the specific procedures you are asking the court to implement;
- 7 (b) identify every person with any knowledge concerning your answer to this Interrogatory,
8 along with a brief description of the subject matter of that person’s knowledge; and
- 9 (c) identify every document that supports, is inconsistent with, or otherwise relates to your
10 answer to this Interrogatory.

11 **ANSWER:**

12 **INTERROGATORY NO. 43:** The first and sixth paragraphs of Section IV of your
13 Election Contest Petition cite RCW 29A.68 and “other applicable law” as the legal basis for
14 your claims in this suit. Please:

- 15 (a) disclose each and every “other applicable law” upon which you base your claims – and
16 for each law you list, state whether you claim that law provides you a cause of action in
17 this suit apart from those provided in RCW 29A.68;
- 18 (b) identify every person with any knowledge concerning your answer to this Interrogatory,
19 along with a brief description of the subject matter of that person’s knowledge; and
- 20 (c) identify every document that supports, is inconsistent with, or otherwise relates to your
21 answer to this Interrogatory.

22 **ANSWER:**

23 **INTERROGATORY NO. 44:** Paragraph (5) of the Relief Requested in your Election
24 Contest Petition requests “other relief the court deems equitable and just”. Please:

- 25 (a) disclose all “other relief” you are requesting the court to grant;
- 26 (b) 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
- (c) identify every document that supports, is inconsistent with, or otherwise relates to your
answer to this Interrogatory.

ANSWER:

1 Clarifying Your "Free & Fair Election" Claim

2
3 **INTERROGATORY NO. 45:** Paragraph VI.G of your Election Contest Petition states
4 that "Washington voters have been deprived of a free and fair election". Please:

- 5 (a) to the extent not fully described in your answers to the other Interrogatories in this set
6 of discovery requests, please state every way in which you claim Washington voters
7 have been deprived of a free and fair election;
- 8 (b) state whether you claim any of the gubernatorial candidates or their campaigns were in
9 any way responsible for depriving Washington voters of a free and fair election – and if
10 you claim any of them were, state for each candidate or campaign exactly what you
11 claim that responsibility was;
- 12 (c) identify every person with any knowledge concerning your answer to this Interrogatory,
13 along with a brief description of the subject matter of that person's knowledge; and
- 14 (d) identify every document that supports, is inconsistent with, or otherwise relates to your
15 answer to this Interrogatory.

16 **ANSWER:**

17 **INTERROGATORY NO. 46:** Are you claiming in this election contest suit that your
18 "free and fair election" allegation provides the basis for a legal claim or cause of action other
19 than what is provided for in Chapter 29A.68 RCW?

20 **ANSWER:**

1 **INTERROGATORY NO. 49:** Are you (or anyone affiliated with you) pursuing any of
2 your claims that voters' rights of equal protection were violated in any other lawsuit or appeal?
3 If "yes", please identify the lawsuit or appeal, along with the equal protection claim being
4 pursued.

5 **ANSWER:**

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8
9 DATED March 8, 2005.

10 ROB McKENNA
11 WASHINGTON ATTORNEY GENERAL

12 Maureen Hart, Solicitor General

13
14 _____
15 Jeffrey T. Even, WSBA No. 20237
16 Attorneys for Respondent Secretary of State
17 Sam Reed

18 Foster Pepper & Shefelman PLLC
19 SPECIAL ASSISTANT ATTORNEYS GENERAL

20 

21 Thomas F. Ahearne, WSBA No. 14804
22 Jeffery A. Richard, WSBA No. 28219
23 Hugh D. Spitzer, WSBA No. 5827
24 Marco J. Magnano, WSBA No. 1293
25 Attorneys for Respondent Secretary of State
26 Sam Reed

27 Objections and Responses submitted this ____ day of March, 2005.

28 DAVIS WRIGHT TREMAINE LLP

29 _____
30 Harry Korrell, WSBA No. 23173
31 Robert Maguire, WSBA No. 29909
32 Attorneys for Petitioners Timothy Borders, Thomas
33 Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward
34 Monaghan, and Christopher Vance, Washington residents
35 and electors, and the Rossi For Governor Campaign

36 RESPONDENT SECRETARY OF STATE'S DISCOVERY
37 REQUESTS TO PETITIONERS - 35

38 FOSTER PEPPER & SHEFELMAN PLLC
39 1111 THIRD AVENUE, SUITE 3400
40 SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 STATE OF WASHINGTON)
2 COUNTY OF _____) ss.

3 Petitioner Thomas Canterbury, being first duly sworn on oath, deposes and says:

4 I have read the foregoing Answers and Responses to RESPONDENT SECRETARY OF
5 STATE'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
6 TO PETITIONERS, know the contents thereof, and believe the same to be true.

7
8 Signature: _____
Thomas Canterbury

9 SUBSCRIBED AND SWORN to before me this _____ day of March, 2005.

10
11 _____
12 (Signature of Notary)

13 _____
14 (Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington,
residing at _____

15 My appointment expires _____
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1 STATE OF WASHINGTON)
2 COUNTY OF _____) ss.

3 Petitioner Tom Huff, being first duly sworn on oath, deposes and says:

4 I have read the foregoing Answers and Responses to RESPONDENT SECRETARY OF
5 STATE'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
6 TO PETITIONERS, know the contents thereof, and believe the same to be true.

7
8 Signature: _____
Tom Huff

9 SUBSCRIBED AND SWORN to before me this _____ day of March, 2005.

10
11 _____
(Signature of Notary)

12
13 (Legibly Print or Stamp Name of Notary)
14 Notary public in and for the state of Washington,
residing at _____

15 My appointment expires _____

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1 STATE OF WASHINGTON)
2 COUNTY OF _____) ss.

3 Petitioner Margie Ferris, being first duly sworn on oath, deposes and says:

4 I have read the foregoing Answers and Responses to RESPONDENT SECRETARY OF
5 STATE'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
6 TO PETITIONERS, know the contents thereof, and believe the same to be true.

7
8 Signature: _____
Margie Ferris

9 SUBSCRIBED AND SWORN to before me this _____ day of March, 2005.

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11 _____
(Signature of Notary)

12
13 (Legibly Print or Stamp Name of Notary)
14 Notary public in and for the state of Washington,
residing at _____

15 My appointment expires _____
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1 STATE OF WASHINGTON)
2 COUNTY OF _____) ss.

3 Petitioner Paul Elvig, being first duly sworn on oath, deposes and says:

4 I have read the foregoing Answers and Responses to RESPONDENT SECRETARY OF
5 STATE'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
6 TO PETITIONERS, know the contents thereof, and believe the same to be true.

7
8 Signature: _____
Paul Elvig

9 SUBSCRIBED AND SWORN to before me this _____ day of March, 2005.

10
11 _____
(Signature of Notary)

12
13 _____
(Legibly Print or Stamp Name of Notary)
14 Notary public in and for the state of Washington,
residing at _____

15 My appointment expires _____
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1 STATE OF WASHINGTON)
2 COUNTY OF _____) ss.

3 Petitioner Edward Monaghan, being first duly sworn on oath, deposes and says:

4 I have read the foregoing Answers and Responses to RESPONDENT SECRETARY OF
5 STATE'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
6 TO PETITIONERS, know the contents thereof, and believe the same to be true.

7
8 Signature: _____
Edward Monaghan

9 SUBSCRIBED AND SWORN to before me this _____ day of March, 2005.

10
11 _____
(Signature of Notary)

12
13 _____
(Legibly Print or Stamp Name of Notary)
14 Notary public in and for the state of Washington,
residing at _____

15 My appointment expires _____
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