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7 **STATE OF WASHINGTON**
8 **CHELAN COUNTY SUPERIOR COURT**

9 TIMOTHY BORDERS, et al.,

10 Petitioners,

v.

11 KING COUNTY, et al.,

12 Respondents,

13 and

14 WASHINGTON STATE DEMOCRATIC
15 CENTRAL COMMITTEE, et al.,

Intervenors-Respondents.

NO. 05-2-00027-3

SECRETARY OF STATE'S
RESPONSE TO
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S MOTION IN
LIMINE TO EXCLUDE
EVIDENCE OF "VOTER
CREDITING" AND TO
REQUIRE PETITIONERS TO
INTRODUCE THE BEST
EVIDENCE OF VOTING

16 COMES NOW Respondent Sam Reed, as Secretary of State of the State of
17 Washington ("Secretary Reed" or "the Secretary"), by and through the undersigned counsel,
18 and responds as follows to the Washington State Democratic Central Committee's Motion in
19 Limine to Exclude Evidence of "Voter Crediting" and to Require Petitioners to Introduce the
20 Best Evidence of Voting ("Motion").

21 Intervenors request that this court exclude evidence that a voter was credited with
22 voting in a county's voter registration database as evidence that the voter in fact cast a ballot
23 at the 2004 general election.¹ Motion at 2. Intervenors ask that the court instead require
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25 ¹ The counties' records are the official records of voter registration for each county. RCW 29A.08.105
26 (effective until January 1, 2006). The Secretary of State maintains a statewide voter registration database, but this consists simply of copies of the county databases. RCW 29A.08.750 (effective until January 1, 2006).

1 reliance upon the voter's signature in a poll book or on an absentee or provisional ballot
2 envelope as the best evidence that the voter in fact voted. *Id.*

3 The importance of a contested election for the state's highest office necessitates that
4 any challenge to the election results be proven by clear evidence.² While it is likely that a
5 voter credited with voting did in fact vote, there are enough reasons why that data may be
6 erroneous to justify the Intervenor's request that the court and parties rely upon the voter's
7 signature in the poll book or on an absentee or provisional ballot envelope. This is
8 particularly true given the availability of more reliable evidence of voting, in the form of poll
9 book and ballot envelope signatures. Just as Washington courts apply the best evidence rule
10 to exclude the introduction of a photocopy into evidence if a genuine question is raised as to
11 the authenticity of the original, *Braut v. Tarabochia*, 104 Wn. App. 728, 732, 17 P.3d 1248
12 (2001), this Court should insist upon the use of poll book pages or ballot envelopes to show
13 that a voter cast a ballot in lieu of less reliable voter crediting data. For this reason, the
14 Secretary supports this Motion.

15 The reasons recounted by the Intervenor as to why a particular voter may be credited
16 for voting even if he or she did not actually vote is the exception rather than the rule. Most
17 voters who are credited with voting did, in fact, vote. However, there are numerous reasons
18 why the number of voters shown on county records as having been credited with voting may
19 not reconcile with the total number of ballots cast in an election.³ *Id.* "The process of
20 crediting voters is a post-election administrative exercise that does not bear upon the
21 authenticity of election results." Declaration of William C. Rava in Support of Washington

22 ² "Unless an election is clearly invalid, 'when the people have spoken, their verdict should not be
23 disturbed by the courts[.]'" *Dumas v. Gagner*, 137 Wn.2d 268, 283, 971 P.2d 17 (1999) (quoting *Murphy v. City*
of Spokane, 64 Wash. 681, 684, 117 P. 476 (1911)).

24 ³ For example, Intervenor's cite an example of a voter who apparently signed the poll book on the wrong
25 line, resulting in the voter who was named on that line being credited with voting even though she did not.
26 Motion at 7. The reverse is also true: The voter who signed on the wrong line presumably was not credited with
voting. An examination of the poll book pages, however, would show which voter actually signed and therefore
the poll book page would be the most accurate source of information.

1 State Democratic Central Committee's Motion in Limine to Exclude Evidence of "Voter
2 Crediting" and to Require Petitioners to Introduce the Best Evidence of Voting, Exhibit B
3 ("Crediting Voters Issues Talking Points, " prepared by Office of the Secretary of State). As
4 Intervenors note, there are numerous reasons why a voter may be "credited with voting" even
5 though that voter did not cast a ballot, or even though a ballot wasn't counted. Similarly, it is
6 possible that a voter may cast a ballot, which is in fact counted, and not be credited for voting.

7 Since that is the case, and since more reliable proof of voting is available, that proof
8 should be required.

9 DATED this 20th day of April, 2005.

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