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THE HONORABLE JOHN E. BRIDGES

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CHELAN COUNTY

Timothy Borders et al.,

Petitioners,

v.

King County et al.,

Respondents,

and

Washington State Democratic Central
Committee,

Intervenor-Respondent.

NO. [05-2-00027-3](#)

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE FIRST
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO RESPONDENT
SECRETARY OF STATE SAM REED
**AND RESPONSES AND
OBJECTIONS THERETO**

WASHINGTON STATE DEMOCRATIC CENTRAL
COMMITTEE'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO SECRETARY
OF STATE SAM REED-1

[/SOS Responses to D's.DOC]

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

1 **TO:** Respondent Secretary of State Sam Reed
2

3 **AND TO:** Jeff Even, Assistant Attorney General and Thomas Ahearne, Foster Pepper &
4 Shefelman, Attorneys for Respondent Secretary of State Sam Reed
5

6 Intervenor-Respondent Washington State Democratic Central Committee
7
8 (“WSDCC”) makes the following interrogatories and requests for production to Respondent
9
10 Secretary of State Sam Reed (the "Secretary"), pursuant to CR 26, 33 and 34.
11

12 **INSTRUCTIONS**

13
14 1. These interrogatories are to be answered separately and fully, in writing and
15 under oath, within thirty (30) days of the date of service on you of these discovery requests.
16

17
18 2. Documents responsive to these requests for production are to be produced at
19 the offices of Perkins Coie, 1201 Third Ave., 48th Floor, Seattle, Washington, within thirty
20 (30) days of the date of service on you of these discovery requests.
21

22
23
24 3. If you object to or fail to answer any of these interrogatories, in whole or in
25 part, state your objections and/or reasons for not responding and state all factual and legal
26 justifications that you believe support your objection or failure to answer.
27

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29
30 4. If you withhold any documents or evidence on the basis of any privilege,
31 provide a list with respect to each document so withheld, stating:
32

- 33
34 a. type of document withheld (e.g., letter, memorandum, email, etc.);
35
36 b. author(s) of document withheld;
37
38 c. recipient(s) of document withheld;
39
40 d. date of document withheld;
41
42 e. subject matter of document withheld;
43
44 f. nature of privilege(s) claimed; and
45
46 g. request(s) to which the document is responsive.
47

WASHINGTON STATE DEMOCRATIC CENTRAL
COMMITTEE'S FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO SECRETARY
OF STATE SAM REED-2

[/SOS Responses to D's.DOC]

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

1 4. The terms "document" and "documents" are used in their broadest sense
2 allowed. "Documents" include, but are not limited to, any writings, drawings, graphs,
3 charts, photographs, phonograph records, tape recordings, notes, diaries, calendars,
4 checkbooks, books, papers, accounts, electronic or videotape recordings, and any computer-
5 generated, computer-stored, or electronically stored matter from which information can be
6 obtained and translated, if necessary, into reasonably useable form. Documents which are
7 identical except for handwritten or other annotations are considered non-identical, separate
8 documents.
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16 5. "Communication(s)" refers to any manner of oral or written communication,
17 regardless of the medium by which such communication occurred.
18

- 19
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21 6. "Identify," when used with respect to a person, means to state the person's:
22
23 a. name;
24
25 b. last-known residence address; and
26
27 c. precinct in which the person allegedly cast a vote.
28

29 7. "Identify," when used with respect to a document, means to describe the
30 document with sufficient particularity so as to provide the basis for a motion to compel
31 production pursuant to Civil Rule 37. In lieu of identifying a document in this manner, it
32 will be sufficient for you to produce all copies of the document in your possession, custody
33 or control.
34
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36

- 37
38 8. "Identify," when used with respect to a communication, means to:
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40 a. identify the date and length of the communication;
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42 b. identify the place where the communication occurred and the medium
43 involved;
44
45 c. identify the persons involved;
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- d. identify the substance of the communication, including the precise language utilized; and
- e. identify any other persons who, though not present or involved, possess information concerning the existence or nature of the communication.

9. "State the factual basis," when used with respect to an event or contention, means to:

- a. describe all the facts and circumstances surrounding the event or contention;
- b. identify each person believed to have knowledge of the event or contention; and
- c. identify each document that refers or relates to the event or contention.

10. "Petitioners" means Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, Christopher Vance, and the Rossi for Governor Campaign, and includes, without limitation, current and former employees, attorneys, accountants, brokers, bankers and other professional advisors or consultants; and, where applicable, each subsidiary, parent or affiliated entity of such person or entity and all persons acting on his, her or their behalf.

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

12. "2004 General Election" means the election held on November 2, 2004 as defined in RCW 29A.04.043 and RCW 29A.04.073.

13. "Gubernatorial Election" means the election for Washington governor held on November 2, 2004.

1 14. "Election Official" means the Auditor, Canvassing Board, inspectors, judges,
2
3 counting center staff, or their designees, or any other County employee who presides over or
4
5 has responsibilities related to the 2004 General Election.

6 15. "Absentee Ballot" means a ballot issued for the 2004 General Election
7
8 pursuant to RCW 29A.40.
9

10 16. "Provisional Ballot" means a ballot issued to a voter at a polling place on
11
12 election day pursuant to RCW 29A.04.008(5). *Note by the Respondent: This definition of*
13
14 *“provisional ballot” is not the same as the commonly understood meaning of the term,*
15
16 *because it excludes absentee ballots that are treated as provisional ballots. The Respondent*
17
18 *accordingly responds to these discovery requests with the commonly used (and more*
19
20 *inclusive) understanding of “provisional ballot.”*
21

22 17. "Federal Write-In Absentee Ballot" means a ballot issued under the
23
24 Uniformed and Overseas Citizens Absentee Voting Act.
25

26 18. "Overseas Ballot" means a ballot issued to an overseas voter pursuant to
27
28 RCW 29A.40.010.
29

30 19. "Out-of-State Ballot" means a ballot issued to an out-of-state voter pursuant
31
32 to RCW 29A.40.010.
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34 20. “Service Ballot” means a ballot issued to a service voter pursuant to
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36 RCW 29A.40.010.
37

38 21. "Challenge" means a challenge to a person’s right to vote made pursuant to
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40 RCW 29A.08.810 and RCW 29A.08.820.
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42 22. "Voter File" means the voter registration database(s) maintained by the
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44 Secretary.
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INTERROGATORIES

General Note regarding scope of requests, applicable throughout these responses:

Respondent understands these interrogatories and requests for production, collectively, as relating to the 2004 general election, and not to prior elections, and therefore except as noted otherwise below the Respondent understands that only facts or documents from September 1, 2004, to the date of these requests are responsive to these requests.

INTERROGATORY NO. 1: Identify the total number of Challenges made regarding any person's right to vote in the 2004 General Election on or before Election Day, and for any such Challenge identify the following:

- a. the name of the Challenged voter;
- b. the name of the person or entity who made the Challenge; and
- c. whether or not the Challenged voter was allowed to cast a vote in the 2004 General Election.

ANSWER: Challenges to an individual's right to vote are filed with the county auditors, and not with the Secretary of State. Accordingly, the Secretary of State has no information responsive to this interrogatory.

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1 **INTERROGATORY NO. 2:** Identify any complaints made against any Election
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3 Official in the 2004 General Election, and for any such complaints identify the following:

- 4 a. the name of the Election Official;
5
6 b. the name of the person making such a complaint;
7
8 c. the substance of the complaint; and
9
10 d. any steps taken by the Secretary to investigate or resolve the complaint.
11

12 **ANSWER:** The Secretary of State has received a number of complaints ostensibly
13
14 filed pursuant to Section 402 of the federal Help America Vote Act of 2002 (42 U.S.C. Sec.
15 15512). Seven of these complaints state objections to the form of primary used in 2004, and
16
17 five state concerns regarding accessibility to polling places by disabled voters. Respondent
18
19 understands, based on consultation with counsel, that you are not interested in complaints
20
21 related to these subjects. Documents relating to four other complaints are produced in
22
23 response to your Request for Production No. 3. Of those four: one (submitted by Linda
24
25 McClain) relates to issuance of provisional ballots to two voters in Spokane County, one
26
27 (submitted by Sharlamane Lilly) relates to the issuance of a provisional ballot to a voter in
28
29 King County, and two (both filed by David Lord) relate to the absence of polling places at
30
31 Western State Hospital and Eastern State Hospital respectively. In all cases, the voter was
32
33 referred to the applicable county auditor.
34
35

36 The Secretary's office has also received a large number of email messages from
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38 individual members of the public, which might loosely be described as "complaints."
39
40 Respondent understands based on consultation with counsel that these communications are
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42 not responsive to this request, although copies may be inspected by arrangement with the
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44 Secretary's office. Similarly, the Secretary received a variety of communications from
45
46 individuals affiliated with both campaigns concerning various issues related to certification
47

1 of the election or the recounts, and while some or all of these may be disclosed in response
2 to other requests, the Secretary does not understand such communications to be
3
4 “complaints” as referenced in this interrogatory. The Secretary also understands that recall
5 charges against the Secretary (who is not an “election official” under the narrow definition
6 stated in your request) are not responsive to this request, but the court files concerning two
7 statements of recall charges are matters of public record. *In re Recall of Reed*, Thurston
8 County Superior Court No. 05-2-00180-9; *In re Recall of Reed*, Thurston County Superior
9 Court No. 05-2-00222-8. Copies of nonprivileged records concerning these matters are
10 available upon request.
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21 **INTERROGATORY NO. 3:** Identify any communications with Petitioners, the
22 Building Industry Association of Washington, the Washington State Republican Party, the
23 Republican Governor’s Association, the Republican National Committee, or any person
24 affiliated with those organizations before November 17, 2004 regarding any of the
25 following:
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- 30
31 a. the Secretary’s maintenance of voter files, including but not limited to
32 registration status of felons and deceased people or Absentee Ballots issued
33 to addresses outside of Washington State;
34
35
36 b. any County’s maintenance of voter files;
37
38 c. procedures or rules to be implemented by the Secretary or any County
39 regarding the 2004 General Election;
40
41 d. Election Official error; or
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43 e. voter fraud or efforts to prevent voter fraud.
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1 **ANSWER:** *Note by the Respondent:* No beginning date is specified in this
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3 interrogatory, and the Secretary accordingly understands it to relate to the 2004 general
4
5 election and not to any earlier primary or election. The Secretary of State’s Office engaged
6
7 in rulemaking during the summer of 2004 that related to the 2004 general election, and the
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9 Secretary understands the reference to “procedures or rules to be implemented by the
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11 Secretary or any County regarding the 2004 General Election” as including those rules, even
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13 though this occurred earlier than the time frame that the Secretary generally understands to
14
15 be responsive to these interrogatories and requests for production. *See* note that precedes
16
17 Interrogatory No. 1.

18
19 The Secretary has identified several email communications, copies of which are
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21 produced in response to your Request for Production No. 3.

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24 **INTERROGATORY NO. 4:** What would the financial impact of a special election
25
26 for governor be on the State of Washington, assuming no recounts were required or
27
28 requested. The financial impact should include, but not be limited to, personnel costs,
29
30 printing and distribution of ballots, envelopes and Voters’ Pamphlets, and the impact on
31
32 other State business. If the financial impact would vary depending on whether the election
33
34 was held in 2005 or in November 2006, please identify the variance and the reason for that
35
36 variance.
37

38 **ANSWER:** *Objection:* irrelevant. Cost is not a factor in determining whether an
39
40 election is required by law. Additionally, since the superior court has ruled, subsequent to
41
42 the date of these interrogatories but prior to these responses, that ordering a new vote is not
43
44 among the available relief in this action, any relevance of this question to this action would
45
46 no longer apply.
47

1 Without waiving this objection, the Secretary responds that no calculation or
2 estimate of the cost of conducting a special election for governor has been made. Such costs
3 to the State of Washington—which for purposes of this response does not include costs
4 borne by counties or county officials—would vary according to several factors. State law
5 currently requires the State to assume a prorated share of the costs of a state primary or
6 election only if the primary or election occurs in an odd-numbered year. RCW 29A.04.420.
7 Additionally, since the costs would be prorated, the number of other issues and offices
8 appearing on the ballot would be factors in determining the estimated cost. Other factors
9 may include the extent to which an election is conducted using polling places or mail
10 ballots, and the number of candidates submitting statements to a state Voters' Pamphlet.
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22 **INTERROGATORY NO. 5:** If a special election for governor required a primary,
23 election would the estimated financial impact identified in response to Interrogatory No. 4
24 double in amount? If not, please estimate the additional financial impact of conducting a
25 primary election.
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30 **ANSWER: *Objection:*** irrelevant. Cost is not a factor in determining whether a
31 primary is required by law. Additionally, since the superior court has ruled, subsequent to
32 the date of these interrogatories but prior to these responses, that ordering a new vote is not
33 among the available relief in this action, this interrogatory any relevance of this question to
34 this action would no longer apply.
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40 Without waiving this objection, the cost of conducting a primary may be greater than
41 or less than the cost of a special general election, depending upon the factors outlined in
42 response to Interrogatory No. 4.
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1 **INTERROGATORY NO. 6:** What was the total cost to the State of Washington of
2 conducting the following:
3

- 4 a. the machine recount of votes cast in the Gubernatorial Election;
5
6 b. the hand recount of votes cast in the Gubernatorial Election; and
7
8 c. the total cost of the 2004 General Election.
9

10 **ANSWER: *Objection:*** irrelevant. Cost is not a factor in determining whether a
11 primary is required by law. Additionally, since the superior court has ruled, subsequent to
12 the date of these interrogatories but prior to these responses, that ordering a new vote is not
13 among the available relief in this action, this interrogatory any relevance of this question to
14 this action would no longer apply.
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20 Without waiving this objection, and as noted in response to Interrogatory No. 4, state
21 law currently requires the State to assume a prorated share of the costs of a state primary or
22 election only if the primary or election occurs in an odd-numbered year. RCW 29A.04.420.
23 Since 2004 was not an odd-numbered year, the state did not share in the costs of performing
24 the election administration functions assigned by law to the counties and to county auditors.
25 The Office of the Secretary of State did bear the costs of performing the operations of the
26 Secretary's Elections Division, including without limitation the cost of preparing the state
27 Voters' Pamphlet. No specific calculation or estimate of these costs as related specifically
28 to the recounts or the general election has been conducted. *See*, however, Laws of 2004, c.
29 276, sec. 111, for the Legislature's 2004 operating budget appropriation to the Secretary of
30 State.
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44 **INTERROGATORY NO. 7:** Identify the methods used by the Secretary to verify
45 that deceased persons and felons are removed from the Voter File.
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1 **ANSWER:** Under current law, the maintenance of voter registration rolls is assigned
2
3 to county auditors, rather than to the Secretary of State. The state does not maintain a
4
5 statewide registration database, except that the Secretary receives copies of the county
6
7 databases for use in checking initiative and referendum signatures.
8
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10 **INTERROGATORY NO. 8:** If a new election were required, please identify any
11
12 changes in election procedure the Secretary would make or require any County to make, if
13
14 any.
15

16 **ANSWER: *Objection:*** This interrogatory is hypothetical and speculative.
17

18 Without waiving this objection, the Secretary would follow state law as it exists at
19
20 the time. The Secretary of State was a co-chair of an Election Reform Task Force, which
21
22 has produced a report proposing a number of changes in election administration. A copy of
23
24 the Task Force Report is produced in response to your Request for Production No. 3. If
25
26 further discussion of this subject is required, Respondent requests a conference pursuant to
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28 CR 37.
29
30

31 **INTERROGATORY NO. 9:** Please list any County in which more voters are
32
33 credited with casting ballots than there were ballots counted in such County. Provide the
34
35 number of these discrepancies (total, per County, and per precinct).
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38 **ANSWER:** Counties do not report this information to the Secretary. Copies of
39
40 voter registration databases provided to the Secretary by county auditors often, but not
41
42 always, show the date each voter was last credited with voting, and to the extent that
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44 counties include this information it is contained in the Secretary's copy of the voter
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1 registration list. Copies of the Secretary's copy of the voter registration database have
2 already been provided.
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6 **INTERROGATORY NO. 10:** Please list any County in which fewer voters are
7 credited with casting ballots than there were ballots counted in such County. Provide the
8 number of these discrepancies (total, per County, and per precinct).
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12 **ANSWER:** Counties do not report this information to the Secretary. Copies of
13 voter registration databases provided to the Secretary by county auditors often, but not
14 always, show the date each voter was last credited with voting, and to the extent that
15 counties include this information it is contained in the Secretary's copy of the voter
16 registration list. Copies of the Secretary's copy of the voter registration database have
17 already been provided.
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26 **INTERROGATORY NO. 11:** Identify the number of Out-of-State Ballots,
27 Overseas Ballots, Service Ballots, or Federal Write-In Absentee Ballots received in the State
28 of Washington in the 2004 General Election. If so, please identify the following:
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- 31
32 a. the type of ballot received;
33
34 b. whether identification information regarding the person casting such a ballot
35 is included in the Voter File; and
36
37 c. the manner in which such ballots are treated in any document reconciling or
38 compiling votes cast in the 2004 General Election , including but not limited
39 to documents related to the certification of the election.
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44 **ANSWER:** The counties do not report this information to the Secretary of State's
45 Office in official certification documents broken down by these categories. Out-of-state
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1 ballots, overseas ballots, service ballots, or federal write-in absentee ballots are simply
2 reported as absentee ballots.
3

4 After the election, the Secretary informally surveyed the counties in order to prepare
5 two reports for the federal Election Assistance Commission (EAC). These reports are
6 known as the Military and Overseas Survey and the Election Day Survey. Copies of both
7 are produced pursuant to your Request for Production No. 3. Those reports contain some of
8 the requested information as reported informally to the Secretary by the county auditors.
9 The Secretary's Office does not verify or vouch for the accuracy of this data, but merely
10 reports the data informally provided by the counties to the EAC.
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21 **INTERROGATORY NO. 12:** Identify the process the Secretary uses to identify
22 felons whose right to vote has been restored.
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24 **ANSWER:** Under current law, the maintenance of voter registration rolls is
25 assigned to county auditors, rather than to the Secretary of State.
26
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28 **REQUESTS FOR PRODUCTION**

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30 **REQUEST FOR PRODUCTION NO. 1:** To the extent you have not already
31 produced the requested documents in response to the WSDCC's Public Disclosure Act
32 requests, produce all documents related to each certification of the 2004 General Election.
33
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36 **RESPONSE:** Please see the general note before Interrogatory No. 1.
37

38 The Secretary produces, in response to this request, the Secretary's statewide
39 certifications and the documents filed with the Secretary by the counties that form the basis
40 for the Secretary's statewide certification. This county information includes cumulative
41 vote totals as to each office and measure submitted by the counties, as well as the signed
42 certifications of the county auditor and county canvassing board.
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1 Counties submit other information related to vote totals after the election, which do
2 not form any part of the basis for the statewide certification and therefore are not
3 “documents related to each certification” as requested. These include further breakdown of
4 results by precinct, legislative district, and congressional district. Some of these are due as
5 late as March 31 of the year following the election. Because these are not “documents
6 related to each certification,” and because not all counties have yet submitted these
7 documents, they are not produced in response to this request.
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16 **REQUEST FOR PRODUCTION NO. 2:** To the extent you have not already
17 produced the requested documents in response to the WSDCC's Public Disclosure Act
18 requests, produce all documents the Secretary of State has or will produce to Petitioners, the
19 Building Industry Association of Washington, the Washington State Republican Party, Re-
20 vote.org, Soundpolitics.com, the Republican Governor’s Association, the Republican
21 National Committee, or any person affiliated with those people or organizations in response
22 to any Public Disclosure Act request.
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30 **RESPONSE:** Please see the general note before Interrogatory No. 1.

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32 These documents are being provided pursuant to the Public Records Request of
33 William Rava, dated January 14, 2005. *Note:* In response to a public records request by
34 Stefan Sharkansky for the Secretary’s copy of the statewide voter registration database,
35 including voter dates of birth, the Secretary produced a redacted version of the database that
36 does not include dates of birth. Because the Secretary has already provided the unredacted
37 database to several parties to this case pursuant to protective orders, and based on
38 consultation with counsel, the Secretary understands that you do not seek the release of a
39 redacted version of the database. Mr. Sharkansky’s request is currently the subject of
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1 litigation in which he seeks the release to him of the same version of the database already
2 released pursuant to protective order to parties to this case.
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6 **REQUEST FOR PRODUCTION NO. 3:** To the extent you have not already
7 produced the requested documents in response to the WSDCC's Public Disclosure Act
8 requests, produce all documents described in, identified in response to, or relied on or
9 referred to in answering, Interrogatories No. 1-12.
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12
13 **RESPONSE:** Please see the general note before Interrogatory No. 1 and the note
14 that precedes the response to Interrogatory No. 3. Responsive records are provided.
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18 **REQUEST FOR PRODUCTION NO. 4:** To the extent you have not already
19 produced the requested documents in response to the WSDCC's Public Disclosure Act
20 requests, produce the Voter File.
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24 **RESPONSE:** The Secretary of State's copy of the voter registration files of the
25 various counties has been previously provided.
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29 **REQUEST FOR PRODUCTION NO. 5:** To the extent you have not already
30 produced the requested documents in response to the WSDCC's Public Disclosure Act
31 requests, and to the extent the Voter File does not include identification of voters with
32 active, inactive or cancelled registration status, please produce documents containing that
33 registration information as of November 17, 2004.
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37 **RESPONSE:** The Secretary of State has previously provided the Secretary of State's
38 copy of the voter registration files of the various counties. The Secretary of State does not
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maintain historical versions of this copy of the county databases, and accordingly the Secretary has nothing further that would be responsive to this request.

DATED: [March 17, 2005](#).

PERKINS COIE LLP

SPEIDEL LAW FIRM

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By _____

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Attorneys for Intervenor-Respondent
Washington State Democratic Central
Committee

RESPONSES DATED this ____ day of _____, 2005.

STATE OF WASHINGTON)

)ss.

COUNTY OF _____)

_____, being first duly sworn, upon oath, deposes and states: That he/she an officer of the Respondent Secretary of State in this lawsuit, that he

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has read the within and foregoing interrogatories and answers thereto, knows the contents thereof, and believes the same to be true and correct to the best of his knowledge.

Its Assistant Director of Elections

SUBSCRIBED AND SWORN TO before me this ____ day of _____,
2005.

NOTARY PUBLIC in and for the State
of Washington, residing at_____
My commission expires _____

The undersigned attorney for Respondent Secretary of State Sam Reed has read the foregoing responses and objections and certifies that they are in compliance with CR 26(g).

Dated this ____ day of March, 2005.

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