FOSTER PEPPER & SHEFELMAN PLLC

ATTORNEYS AT LAW

Direct Phone
(206) 447-4674

Direct Facsimile
(206) 749-2039

E-Mail
ramer@foster.com

July 29, 2005

VIA FEDERAL EXPRESS

Office of the Clerk
U.S. Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Washington State Republican Party v. Logan*, W.D. Wash. No. CV05-0927Z

Dear Clerk of the Court:

Enclosed with this letter for filing on behalf of the Washington State Grange, Interveanor-Defendant below are an original and five (5) copies of a **Motion for Expedited Review** and a **Representation Statement** in the above-entitled case. The Washington State Grange filed its appeal today, Friday, July 29, 2005, in the Western District of Washington. Also included with this letter are courtesy copies of the Notice of Appeal and Docketing Statement.

An extra copy of the **Motion for Expedited Review** and the **Representation Statement** have been included for you to return as stamped and conformed, along with a return fed-ex envelope.

If you have any questions, please don't hesitate to give me a call.

Sincerely,

Ramsey Ramerman

Enclosures

Cc: John J. White, Jr
David T. McDonald
Richard Shepard
Maureen Hart

1111 THIRD AVENUE
Suite 3400
SEATTLE Washington
98101-3299

Telephone
(206)447-4400
Facsimile
(206)447-9700
Website
WWW.FOSTER.COM

ANCHORAGE Alaska

PORTLAND Oregon

SEATTLE Washington

SPOKANE Washington

50561067.01

James K. Pharris
Jeffrey T. Even
Thomas Ahearne

Thomas F. Ahearne
Ramsey Ramerman
Rodrick J. Dembowski
FOSTER PEPPER & SHEFELMAN PLLC
1111 Third Ave., suite 3400
Seattle, WA 98101
(206) 447-4400 (tel.)
(206) 447-9700 (fax)

Attorneys for Appellant/Defendant-Intervenor
Washington State Grange

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Appellee /Plaintiffs,

WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al.,

Appellee /Plaintiff Intervenors,

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Appellee /Plaintiff Intervenors,

v.

DEAN LOGAN, King County Records & Elections Division Manager; et al.,

Defendants,

STATE OF WASHINGTON, et al.,

Defendant Intervenors,

WASHINGTON STATE GRANGE,

Appellant/Defendant Intervenor.

No.

(Dist. Ct. No. CV05-0927Z)

APPELLANT WASHINGTON STATE GRANGE'S

MOTION TO EXPEDITE REVIEW

PURSUANT TO CIRCUIT RULES 27-12 & 34-3(3)

50558805.05

I. SUMMARY OF THIS MOTION

The defendants have appealed the district court's injunction orders declaring Washington's top-two election system unconstitutional on its face and immediately enjoining its implementation. This motion respectfully requests an expedited review of the defendants' appeal so Washington can enact legislation consistent with this Court's decision in time for next year's 2006 election cycle.

Such expedited review is essential because even-numbered years are "short session" years in Washington – meaning the Legislature's January 9, 2006 session is limited to 60 consecutive days. Washington Constitution, Article II, §12.

Such expedited review is practical because the legal issues in this facial challenge have already been fully briefed, the trial court record is already on electronic file, and the injunction hearing's transcript has already been completed.

And such expedited review of defendants' appeal is fair because the schedule requested by this motion is far less demanding than the schedule plaintiffs imposed below by waiting until the last minute to file their motions attacking the top-two election system Washington had enacted over a half year earlier.

Counsel for the defendant filing this motion (the Washington State Grange) has attempted to contact counsel for the other parties, but was not able to reach lead counsel for the plaintiffs/appellees (representing Washington's three largest political parties) to determine their position on expedited review. The Grange's co-defendant/co-appellant in this case (the State of Washington on behalf of itself, Secretary of State, Attorney General, and County Auditors) supports this motion's request for expedited review.

II. RELIEF SOUGHT

This motion seeks expedited review of the defendants' appeal of the district court's July 2005 injunction orders enjoining implementation of Washington's top-two election system – namely, its July 15 Order (preliminary injunction) and July 29 Order (permanent injunction).

For the reasons explained in Part III below, this motion respectfully requests the following expedited schedule to allow the State to enact legislation consistent with this Court's decision in time for the 2006 election cycle:

Opening Briefs	Friday, August 29, 2005
Response Briefs	Monday, September 26, 2005
Reply Briefs	Monday, October 10, 2005
Oral Argument	Early November/late October, 2005
Court Decision	Mid-January, 2006

III. BACKGROUND FACTS

The People of Washington's elected representatives (the Washington State Legislature) enacted a top-two election system for the 2004 election cycle, but then a lame-duck governor vetoed it to implement a so-called "Montana" system instead.[1] Washington's 2004 primary and ensuing general election therefore proceeded under a "Montana" system.

At the November 2, 2004 general election, Washington's voters overwhelmingly rejected that "Montana" system and enacted a top-two election

[1] *See Washington State Grange v. Locke, 105 P.3d 9 (Wash. 2005) (upholding veto).*

50558805.05

system in its place for elections commencing in 2005. That enactment was Initiative 872, which the People of Washington adopted by a 60% - 40% vote.

Constitutional challenges to Washington Initiative measures are commonly filed in court within a few weeks of their November enactment.[2]

The plaintiffs in this case, however, waited over half a year to challenge Initiative 872. And they filed their injunction motions barely a month before the County Auditors were set to implement that Initiative's top-two election system.

Since County Auditors had to have a court ruling by July 15 to know what kind of election system to implement for the 2005 election cycle, plaintiffs' delay necessitated an expedited briefing, hearing, and decision schedule in the district court. That expedited schedule was:

Opening Briefs	Friday, June 17, 2005
Response Briefs	Friday, July 1, 2005
Reply Briefs	Wednesday, July 6, 2005
Oral Argument	Wednesday, July 13, 2005
Court Decision	Friday, July 15 (preliminary injunction order); Friday, July 29 (permanent injunction order).

---

[2] *E.g.,* *City of Burien v. Kiga, 31 P.3d 659, 661-62 (Wash. 2001) (Initiative passed November 7; lawsuit challenging its constitutionality filed November 9); Amalgamated Transit Union Local 587 v. State of Washington, 11 P.3d 762, 775, (Wash. 2000) (Initiative passed on election day, November 2, lawsuit challenging its constitutionality filed November 18); Pierce County v. State of Washington, 78 P.3d 640, 644 (Wash. 2003) (Initiative passed November 5; lawsuit challenging its constitutionality filed November 27).*

50558805.05

The defendants immediately appealed upon the district court's entry of its permanent injunction order, and the defendant Washington State Grange simultaneously files this motion for expedited review of that appeal.

IV. LEGAL DISCUSSION

This Court's rules provide for expedited review upon a showing of "good cause". Circuit Rule 27-12. Such cause exists in this case for several reasons.

First, this Court's rules expressly designate injunction appeals as "Priority Cases" given priority ahead of other cases for hearing dates. Circuit Rule 24-3(3).

Second, this Court's prior decisions confirm that expedited review is proper for rulings on the constitutionality of State laws or injunctions requiring specific State action. E.g., *Gregorio T. v. Wilson*, 54 F.3d 599, 600 (9th Cir. 1995) (expedited review of injunction blocking enforcement of State Initiative); *Daily Herald v. Munro*, 758 F.2d 350, 350 (9th Cir. 1984) (expedited review of challenge to State election law); *Students of California School for the Blind v. Honig*, 736 F.2d 538, 542 (9th Cir. 1984) (expedited review of injunction requiring State to perform certain testing), vacated as moot, 471 U.S. 148, 105 S.Ct 1820, 85 L.Ed.2d 114 (1985).

For example, the *Daily Herald* case concerned a July 11 district court decision on the constitutionality of a Washington State law that addressed exit polling on election day. 758 F.2d at 351. In order to provide an appellate decision in time for that year's November election, this Court granted expedited review of the district court's July decision – with oral argument on October 4 and the entry of an appellate decision reversing the district court in time for that year's November

50558805.05

election. *Daily Herald*, 758 F.2d at 352 (noting 9th Circuit's decision issued November 2 and argument date of October 4); *Daily Herald v. Munro*, 10 Med. L. Rep. 2144 (W.D.Wash. – order dated July 11, 1984), rev'd 758 F.2d 350 (9th Cir. November 2, 1984).

This motion does not seek as expedited of a schedule as the one this Court granted in the *Daily Herald* case. Frankly, that is because the plaintiffs' successfully timed their filing to effectively make the injunction they secured a *fait accompli* for <u>this</u> year's 200<u>5</u> election cycle. The defendants do, however, seek with this motion a schedule that is expedited enough to allow the Washington Legislature to enact legislation consistent with this Court's decision in time for <u>next</u> year's 200<u>6</u> election cycle.

Third, this Court's rules also recognize that just cause for expedited review exists if "in the absence of expedited treatment, irreparable harm may occur". Circuit Rule 27-12(3). And that is precisely the case here.

The district court's injunction orders impose upon the State of Washington and its voters the "Montana" system that was overwhelmingly rejected when the top-two system was enacted in its place on November 2, 2004. That court-imposed "Montana" system will as a practical matter continue in 2006 if this Court does not decide this appeal by mid-January 2006.

That mid-January date is based on pragmatic reality. The Washington State Constitution provides that even numbered years (such as 2006) are "short session"

years limited to 60 consecutive days.[3] In 2006, that session starts on January 9.[4] And for a bill to be enacted it must typically be drafted and passed out committee by the 26th day of the legislative session – which in 2006 will be Friday, February 4.[5] Given that February cut-off, delaying the decision in this appeal past mid-January 2006 will as a practical matter preclude the Washington Legislature from being able to draft and enact election legislation consistent with this Court's ruling in time for Washington's 2006 election cycle.

By waiting half a year after the Initiative's enactment to file suit, and then filing their injunction motions the month before County Auditors began implementing that Initiative's top-two system, the plaintiffs have already succeeded in getting a federal court to irreversibly defeat the overwhelming decision of Washington's voters (and their elected representatives) to employ a top-two election system in 2005.

In the absence of the expedited treatment requested in this motion, that same irreparable harm will as a practical matter irreversibly occur again in 2006. That practical reality adds a third reason this motion should be granted.

---

[3] *Washington State Constitution, Article II, §12 (regular session in even-numbered years "shall not be more than sixty consecutive days").*

[4] *See Wash. Rev. Code § 44.04.010 ("Regular sessions of the legislature shall be held annually, commencing on the second Monday of January.").*

[5] *The cut-off date for bills to pass out of committee are set by the Senate Concurrent Resolution passed the first day of the session. For the short 60-day sessions on even years, the cut-off by which all bills (other than budget appropriations) must pass out of committee has historically been set as the 26th day after the session starts. E.g., S.C.R 8417, 2004 Wash. Leg.; S.C.R 8424, 2002 Wash. Leg.; S.C.R 8421, 2000 Wash. Leg.; S.C.R 8423, 1998 Wash. Leg.*

Fourth, an expedited review of defendants' appeal is fair. The injunction orders against the defendants were granted on a much more expedited schedule due to plaintiffs' litigation strategy of waiting over half a year after the Initiative's November 2004 enactment to file suit, and then filing their injunction motions the month before the County Auditors began implementing that Initiative's top-two system for 2005. As noted earlier, the plaintiffs' strategy imposed an expedited schedule with less than a month between opening briefs and the district court's detailed, 40-page injunction order against the defendants:

Opening Briefs	Friday, June 17, 2005
Response Briefs	Friday, July 1, 2005
Reply Briefs	Wednesday, July 6, 2005
Oral Argument	Wednesday, July 13, 2005
Court Decision	Friday, July 15 (preliminary injunction order); Friday, July 29 (permanent injunction order).

In light of the expedited schedule plaintiffs imposed to get their injunctions against the defendants, simple balance and fairness supports an expedited review of those injunctions orders – especially since the schedule requested in this motion is far less demanding than the one previously imposed by the plaintiffs in this case:

Opening Briefs	Friday, August 29, 2005
Response Briefs	Monday, September 26, 2005
Reply Briefs	Monday, October 10, 2005
Oral Argument	Early November/late October, 2005
Court Decision	Mid-January, 2006

V. CONCLUSION

The plaintiffs' strategic filing delays below puts everyone under tight deadlines and schedules. And their strategy succeeded in imposing upon the People of Washington a 2005 election process dictated by federal court injunctions instead of one enacted by the State's duly elected legislative authority.

Instead of continuing that court-imposed election system into 2006, this Court should grant the expedited review requested in this motion so the Washington Legislature can enact legislation consistent with this Court's decision in time for the 2006 election cycle.

Such expedited review is essential given that 2006 is a "short session" year under the Washington Constitution.

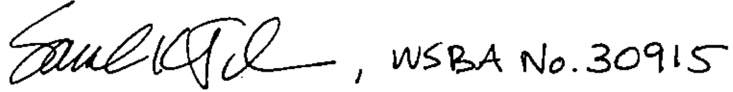
It is practical because the legal issues in this facial challenge have already been fully briefed and the trial court record (including transcript) has already been completed.

And it is fair given the conduct of plaintiffs in precipitating this needed expediency on appeal.

The appellant Washington State Grange therefore respectfully requests that this Court grant the expedited review of defendants' appeal as requested in this motion.

DATED this 29th day of July 2005.

FOSTER PEPPER & SHEFELMAN PLLC



for Thomas F. Ahearne, WSBA No. 14844
Ahearne@foster.com
Ramsey Ramerman, WSBA No. 30423
Ramer@foster.com
Rodrick J. Dembowski, WSBA No. 31479
Dembr@foster.com

Foster Pepper & Shefelman PLLC
1111 Third Avenue Suite 3400
Seattle, Washington 98101
Phone: 206-447-4400
Fax: 206-447-9700
Attorneys for Appellant/Defendant-Intervenor Washington State Grange

STATEMENT OF RELATED CASES

The co-defendant State of Washington (on behalf of itself, Secretary of State, Attorney General, and County Auditors) has also filed an appeal from the district court's injunction orders.

DATED this 29th day of July 2005.

Ramsey Ramerman, WSBA No. 30423
FOSTER PEPPER & SHEFELMAN PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101

Attorneys for Intervenor-Defendant/Appellant Washington State Grange

CERTIFICATE OF SERVICE

RAMSEY RAMERMAN states:

I hereby certify that I served the above document via U.S. Mail and e-mail on July 29, 2005, and via personal service on August 1, 2005, upon the following parties:

John J. White, Jr./Kevin B. Hansen
Livengood, Fitzgerald & Alskog
121 Third Avenue
Kirkland, WA 98083-0908
white@lfa-law.com; hansen@lfa-law.com
Attorneys for Plaintiffs Washington State Republican Party *et. al.*,

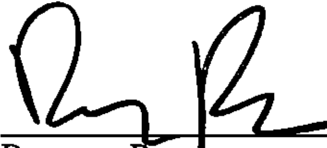
David T. McDonald/Jay Carlson
Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Davidm@prestongates.com; jcarlson@prestongates.com
Attorneys for Intervenor Plaintiffs Washington Democratic Central Committee
and Paul R. Berendt

Richard Shepard
Shepard Law Office, Inc.
818 So. Yakima Ave., #200
Tacoma, WA 98405
richard@shepardlawoffice.com
Attorneys for Intervenor Plaintiffs Libertarian Party of Washington State, Ruth
Bennett and J.S. Mills

Maureen Hart/James K. Pharris/Jeffrey T. Even
1125 Washington Street SE
Olympia, WA 98501-0100
robm@atg.wa.gov;marnieh@at.wa.gov;JamesP@atg.wa.gov;
Jeffe@atg.wa.gov
Attorneys for Defendants State of Washington, Secretary of State Sam Reed and
Attorney General Rob McKenna

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Seattle, Washington this 29th day of July, 2005.



Ramsey Ramerman

Thomas F. Ahearne
Ramsey Ramerman
Rodrick J. Dembowski
FOSTER PEPPER & SHEFELMAN PLLC
1111 Third Ave., suite 3400
Seattle, WA 98101
(206) 447-4400 (tel.)
(206) 447-9700 (fax)

Attorneys for Appellant/Defendant-Intervenor
Washington State Grange

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY, et al., Appellee/Plaintiffs, WASHINGTON DEMOCRATIC CENTRAL COMMITTEE, et al., Appellee /Plaintiff Intervenors, LIBERTARIAN PARTY OF WASHINGTON STATE, et al., Appellee /Plaintiff Intervenors, v. DEAN LOGAN, King County Records & Elections Division Manager; et al., Defendants, STATE OF WASHINGTON, et al., Defendant Intervenors, WASHINGTON STATE GRANGE, Appelant/Defendant Intervenor.	COA No. (Dist. Ct. No. CV05-0927Z) REPRESENTATION STATEMENT

50557971.05

ORIGINAL

1 The undersigned represents the Washington State Grange, Defendant-Interveanor and
2 Appellant in this mater, and no other party. Attached is a service list that shows all of the
3 current parties to the action below, and identifies their counsel by name, firm, address and
4 telephone number, where appropriate. (F.R.A.P. 12(b); Circuit Rule 3.2(b).)

5 Attorneys for Plaintiffs Washington State Republican Party, Christopher Vance, Bertabelle
6 Hubka, Stave Neighbors, Brent Boger, Marcy Collins, and Michael Young

7 John J. White, Jr./Kevin B. Hansen
Livengood, Fitzgerald & Alskog
8 121 Third Avenue
Kirkland, WA 98083-0908
9 425-822-9281
white@lfa-law.com; hansen@lfa-law.com
10

11 Attorneys for Plaintiff-Intervenors Washington Democratic Central Committee,
and Paul R. Berendt

12 David T. McDonald/Jay Carlson
13 Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
14 Seattle, WA 98104-1158
206-623-7580
15 Davidm@prestongates.com; jcarlson@prestongates.com

16 Attorneys for Plaintiff-Intervenors Libertarian Party of Washington State
Ruth Bennett, and J.S. Mills

17 Richard Shepard
18 Shepard Law Office, Inc.
818 So. Yakima Ave., #200
19 Tacoma, WA 98405
253-383-2235
20 richard@shepardlawoffice.com

21 Attorneys for Defendant-Intervenors State of Washington, Secretary of State Sam Reed, and
Attorney General Rob McKenna

22 Maureen Hart/James K. Pharris/Jeffrey T. Even
23 1125 Washington Street SE
Olympia, WA 98501-0100
24 360-664-3027
robm@atg.wa.gov;marnieh@at.wa.gov;
25 JamesP@atg.wa.gov; Jeffe@atg.wa.gov

26

1 In addition, identified below is a list that shows all of the original Defendants who were
2 dismissed from this case by stipulation before the district court entered the injunction orders
3 being appealed. This list also identifies their counsel by name, firm, address and telephone
4 number, where appropriate.

5 Attorneys for Previously Dismissed Defendant King County Director of Elections Dean Logan

6
7
8
9
10

Norm Maleng, Tom Kuffel, and Janine Joly
Records, Elections and Licensing Services Division
King County
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2337
206-296-0191
Norm.maleng@metrokc.gov

11 Attorneys for Previously Dismissed Defendant Snohomish County Auditor Bob Terwilliger

12
13
14
15

Janis Ellis, Gordon Silvey
Snohomish County Prosecuting Attorneys
3000 Rockefeller Ave., M/S 504
Everett, WA 98201
425-388-6330
prosecuting.attorney@co.snohomish.wa.us;
gsilvey@co.snohomish.wa.us

16 Attorneys for Previously Dismissed Defendant Spokane County Auditor Vicky Dalton

17
18
19
20

Steven J. Tucker, Prosecuting Attorney
Public Safety Building, 1st Floor
1100 West Mallong
Spokane, WA 99260
509-545-2216
stucker@spokanecounty.org

Attorneys for Previously Dismissed Defendant Clark County Auditor Greg Kimsey

21
22
23
24

Arthur D. Curtis, Clark County Prosecuting Attorney
Curt Wyrick, Chief Deputy Prosecuting Attorney
1013 Franklin Street, Vancouver, WA 98660-5000
Mailling address: PO Box 5000, Vancouver, WA 98666
360-397-2261
art.curtis@clark.wa.gov; curt.wyrick@clark.wa.gov

25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Attorneys for Previously Dismissed Defendant Cowlitz County Auditor Christina Swanson

Susan Baur, Prosecuting Attorney
Hall of Justice
1st Floor, Room 105
Kelso, WA 98626
360-577-3080
BaurS@co.cowlitz.wa.us

Attorneys for Previously Dismissed Defendant Grays Harbor Auditor Vern Spatz

H. Stewart Menefee, Prosecuting Attorney
PO Box 6550, Montesano, WA 98563
102 W. Broadway, Room 102, Montesano, WA 98563
360-249-3951
smenefee@co.grays-harbor.wa.us

Attorneys for Previously Dismissed Defendant Pacific County Auditor Pat Gardner

David Burke, Prosecuting Attorney
300 Memorial Drive
PO Box 45
South Bend, WA 98586
360-875-9361
dburke@co.pacific.wa.us

Attorneys for Previously Dismissed Defendant Wahkiakum County Auditor Diane L. Tischer

Fred A. Johnson, Prosecuting Attorney
PO Box 116
Cathlamet, WA 98612
360-795-3652
fjohnson@wapa-sep.wa.gov

//

//

//

//

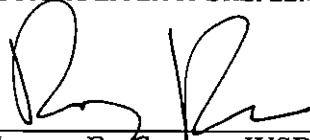
//

//

Attorneys for Previously Dismissed Defendant Jefferson County Auditor Donna Eldridge

Juelie Dalzell, Prosecuting Attorney
David Alvarez
PO Box 1220
Port Townsend, WA 98368
360-385-9180
Jdalzell@co.jefferson.wa.us

FOSTER PEPPER & SHEFELMAN PLLC



Thomas F. Ahearne, WSBA No. 14844
Ahearne@foster.com
Ramsey Ramerman, WSBA No. 30423
Ramer@foster.com
Rodrick J. Dembowski, WSBA No. 31479
Dembr@foster.com

Foster Pepper & Shefelman PLLC
1111 Third Avenue Suite 3400
Seattle, Washington 98101
Phone: 206-447-4400
Fax: 206-447-9700
Attorneys for the Appellant and Defendant-Intervenor Washington State Grange

CERTIFICATE OF SERVICE

RAMSEY RAMERMAN states:

I hereby certify that I served the above document via U.S. Mail and e-mail on July 29, 2005, and via personal service on August 1, 2005, upon the following parties:

John J. White, Jr./Kevin B. Hansen
Livengood, Fitzgerald & Alskog
121 Third Avenue
Kirkland, WA 98083-0908
white@lfa-law.com; hansen@lfa-law.com
Attorneys for Plaintiffs Washington State Republican Party *et. al.*,

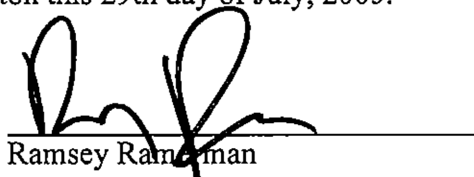
David T. McDonald/Jay Carlson
Preston Gates & Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Davidm@prestongates.com; jcarlson@prestongates.com
Attorneys for Intervenor Plaintiffs Washington Democratic Central Committee and Paul R. Berendt

Richard Shepard
Shepard Law Office, Inc.
818 So. Yakima Ave., #200
Tacoma, WA 98405
richard@shepardlawoffice.com
Attorneys for Intervenor Plaintiffs Libertarian Party of Washington State, Ruth Bennett and J.S. Mills

Maureen Hart/James K. Pharris/Jeffrey T. Even
1125 Washington Street SE
Olympia, WA 98501-0100
robm@atg.wa.gov;marnieh@at.wa.gov;JamesP@atg.wa.gov; Jeffe@atg.wa.gov
Attorneys for Defendants State of Washington, Secretary of State Sam Reed and Attorney General Rob McKenna

I certify and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Seattle, Washington this 29th day of July, 2005.



Ramsey Ramerman