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SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

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

Petitioners,

v.

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

Respondents,

v.

Washington State Democratic Central Committee,
Intervenor Respondents

v.

Libertarian Party of Washington State,
Intervenor Respondents.

Honorable John E. Bridges

NO. 05-2-00027-3

RESPONDENT
SECRETARY OF STATE'S
INTERROGATORIES AND
REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO THE
WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE [*"Secretary of
State's Discovery Requests
To the Democrats"*]

**AND THE WASHINGTON
STATE DEMOCRATIC
CENTRAL
COMMITTEE'S
RESPONSES THERETO**

TO: Respondent Secretary of State ("Secretary");

AND TO: Jeffrey Even and Thomas Ahearne, Attorneys for Respondent Secretary of State.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERETO - 1

[15934-0006-000000/SL050700.056]

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

1 Pursuant to CR 26, 33 and 34, Intervenor-Respondent Washington State Democratic
2 Central Committee ("WSDCC") hereby serves its Answers, Responses and Objections to
3 Secretary of State's Discovery Requests to the Democrats.
4
5

6
7 **INTRODUCTION**

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

13
14 *Given the purpose of these discovery requests, as well as the significant amount of*
15 *investigation and discovery that the Petitioners and political parties have for many months*
16 *been doing with respect to their claims in this case, the Petitioners and political parties*
17 *should have no difficulty providing, full and candid answers so this election contest can*
18 *promptly proceed to an orderly resolution on the merits. (See also, e.g., Civil Rule 11 and*
19 *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858*
20 *P.2d 1054 (1993))*

21
22 *If counsel for the Petitioners or a political party nonetheless has an objection to*
23 *answering some part of these discovery requests, the undersigned counsel for the Secretary*
24 *of State will gladly make themselves available for a discovery conference before these*
25 *requests' April 7 deadline in order to work out a fair resolution to that objection so answers*
26 *can be timely provided without unnecessary delays and expense.*
27

28
29 **FIVE GENERAL REMINDERS**

30 1. **Interrogatories:** Since the Chelan County Superior Court has ruled that the
31 Civil Rules apply in this case, the Respondent Secretary of State is serving these
32 Interrogatories upon you pursuant to Civil Rule 33. You are reminded that Rule 33 requires
33 you to answer each of these Interrogatories under oath, and to then deliver those sworn
34 answers to the undersigned attorney's Seattle, Washington office on or before Thursday,
35 April 7, 2005.
36

37
38 These Interrogatories cover and include all information and knowledge available to
39 you. This includes all information and knowledge available to any person who obtained
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 2

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1 information for you or on your behalf- including your agents, investigators, consultants, and
2 representatives.
3

4
5 1. Production Requests: Since the Chelan County Superior Court has ruled that
6 the Civil Rules apply in this case, the Respondent Secretary of State is serving these
7 Production Requests upon you pursuant to Civil Rule 34. You are reminded that Rule 34
8 requires you to find the "documents" described in these Production Requests and produce
9 them at the undersigned attorney's Seattle, Washington office to be inspected and copied at
10 9:00 a.m. on Thursday, April 7, 2005.
11
12

13
14
15
16 These Production Requests cover and include all "documents" of any nature which
17 are or have been within your possession, custody, or control. This includes all the documents
18 of any person who obtained information for you or on your behalf- including your agents,
19 investigators, consultants, and representatives. All "documents" shall be produced in the
20 same folders, files, and form in which they are maintained by the person who holds or
21 maintains those documents. Documents attached to each other shall not be separated.
22
23

24
25
26
27 3. Objections: Since the Chelan County Superior Court has ruled that the Civil
28 Rules apply in this case, you are reminded that if you object to producing any of the
29 requested "documents", or object to answering any part of any Interrogatory, then you must
30 fully state your objection and all the factual and legal reasons supporting your objection. If
31 you object on the ground of privilege, you must fully state the nature and extent of the
32 privilege you claim. If you object to answering only part of a Production Request or
33 Interrogatory, you must identify the specific part to which you object and answer the
34 remainder. ANY OBJECTION WHICH IS NOT SO ASSERTED OR IS NOT TIMELY
35 SERVED WILL BE DEEMED WAIVED. **You are also expressly reminded of your**
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 3

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1 **discovery response obligations under *Washington State Physicians Ins. Exchange &***
2
3 ***Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993), and its progeny.**

4
5 4. Supplementation: Since the Chelan County Superior Court has ruled that the
6
7 Civil Rules apply in this case, you are reminded that Rule 26(e) requires you to supplement
8
9 your Interrogatory answers and Production Request responses after you have served your
10
11 initial answers and responses.

12
13 These Production Requests and Interrogatories are continuously renewed to and
14
15 through the hearing of this case. Therefore, if you ever obtain any information that
16
17 materially affects any Interrogatory answer or Production Request response so that the
18
19 affected answer or response is no longer true, you are required to promptly correct that
20
21 answer or response. Your failure to do that will be a knowing concealment of the truth.

22
23 5. Sanctions. Since the Chelan County Superior Court has ruled that the Civil
24
25 Rules apply in this case, you are reminded that the Court may severely sanction you if you
26
27 fail to comply with any of the Civil Rules. For example, Rule 37 authorizes the Court to
28
29 exclude evidence favorable to you, to strike your pleadings and enter a default judgment
30
31 against you, and order you to pay the expenses and attorney fees of the party submitting
32
33 these discovery requests.

34 SEVEN DEFINITIONS

35
36
37 The following paragraphs define several of the terms used in these discovery
38
39 requests so you cannot claim in good faith to have misunderstood what these discovery
40
41 requests are requesting. Therefore, please read these definitions carefully.

42
43 (a) "Petitioners" means Timothy Borders, Thomas Canterbury, Tom Huff,
44
45 Margie Ferris, Paul Elvig, Edward Monaghan, Christopher Vance, and the Rossi For
46
47 Governor Campaign.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 4

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1 (b) “you” & “your” mean the Washington State Democratic Central Committee.

2
3 (c) “person” means humans as well as entities. For example, the term "person"
4 includes any type of candidate committee, political party, company, partnership, association,
5 organization, and non-profit corporation.
6
7

8 (d) “document” means any written, typed, graphic, recorded, or electronically
9 stored matter whatsoever. The term “document” accordingly includes emails, letters,
10 telefaxes, pictures, files, summaries, spreadsheets, notes, drafts, and working papers.
11
12

13 If any information is on a computer disk, tape, or other memory or storage device,
14 the term “document” means (i) a printout of that information in hard-copy form, or (ii) a CD
15 or DVD with a complete, useable copy of all of that information. Thus, for example, the
16 term “document” includes a hard-copy printout, CD, or DVD of all emails responsive to
17 these discovery requests.
18
19
20
21
22
23

24 (e) “identify”.

25 (i) When applied to a human, the term "identify" means state their full name
26 and, to the extent reasonably available to you, the phone number, email
27 address, and residence address at which they can most easily be
28 contacted.
29
30
31

32 (ii) When applied to an entity, the term "identify" means state that entity's full
33 name and, to the extent reasonably available to you, the phone number,
34 email address, and business address at which it can most easily be
35 contacted.
36
37

38 (iii) When applied to a document, the term "identify" means state its general
39 description (e.g., letter, handwritten note, report, etc.), its date, its
40 addressee, its author, a brief summary of its general contents and, to the
41 extent reasonably available to you, the persons receiving copies of that
42 document. *Alternatively, if that document is being produced with*
43 *document production numbers on it, you may simply state the document*
44 *production numbers.*
45
46
47

1 (f) "and" & "or". The words "and" and "or" should not be interpreted to
2
3 exclude any information from any Interrogatory answer or Production Request response.
4 Both words should therefore be interpreted to mean "and/or" when necessary to prevent such
5
6 exclusion.
7

8 (g) Singular/Plural. The use of the singular or plural form of a word in any
9
10 Interrogatory or Production Request should not be construed to exclude any information
11
12 from any Interrogatory answer or Production Request response.
13

14 I. GENERAL OBJECTIONS

15
16 1. WSDCC objects to production of information or documents that are outside
17
18 of its possession, custody or control.
19

20 2. WSDCC objects to the production of privileged communications, including
21
22 attorney-client communications, or information covered by the attorney work-product
23
24 doctrine.
25

26 3. WSDCC objects to these discovery requests to the extent they seek
27
28 information that is neither relevant to the issues in the litigation nor reasonably calculated to
29
30 lead to the discovery of admissible evidence.
31

32 4. WSDCC answers these requests without prejudice to its argument that all
33
34 allegedly illegal voters had to be challenged *before* the 2004 General Election as provided in
35
36 RCW 29A.68.020(5)(b).
37

38 5. WSDCC's objects to these requests to the extent they focus on "proportional"
39
40 or other "circumstantial evidence" related to how illegal votes might have been cast. As our
41
42 Supreme Court has emphasized with respect to illegal votes, if no evidence is produced
43
44 showing for whom the elector voted, such votes "must be treated between the parties as an
45
46 legitimate vote. Neither of the candidates were responsible for the manner in which the vote
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
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1 got into the ballot box, and, both being innocent of wrongdoing, it would be an injustice to
2 charge the error to either of them." *Hill v. Howell*, 70 Wash. 603, 610-611 (1920).

3
4
5 6. Discovery is ongoing in this case, and WSDCC reserves the right to
6 supplement or amend these responses as new information is disclosed in the course of this
7 litigation.
8

9
10 7. Unless attached hereto or otherwise noted, documents will be produced at the
11 offices of Perkins Coie LLP, 1201 Third Ave., 48th floor, Seattle, WA. These documents
12 will be made available at a time mutually convenient for the parties and their counsel.
13
14

15 8. Each General Objection applies to each of the interrogatories and requests for
16 production below, as though fully stated. Any repetition is for emphasis only and not to the
17 exclusion of any other General Objection.
18
19
20
21

22
23 **INTERROGATORIES & PRODUCTION REQUESTS**
24 **[following pages]**
25

26
27 **Errors, Etc. Alleged Against The Respondent Secretary Of State**

28 *Without specifying the "respondents" to which it refers, the Election Contest Petition*
29 *alleges that respondents committed "errors ", "omissions ", "mistakes ", "misconduct ",*
30 *"neglect", and "other wrongful acts" -- e.g., that this election is being contested "because of*
31 *the errors, omissions, misconduct, neglect, and other wrongful acts of respondent election*
32 *officials" (1st para., Sec. 117), because "Respondents ... have made errors and been*
33 *negligent, and they have committed other wrongful acts" (2nd para., Sec. IV), because*
34 *"respondents have committed errors, omissions, mistakes, neglect, and other wrongful acts"*
35 *(Sec. VIA), and because of "Respondents' errors, omissions, misconduct, neglect, and other*
36 *wrongful acts" (Sec. VIB-C). The, following Interrogatories ask you to disclose your claims*
37 *and facts (if any) with respect to one of those respondents - i.e., the respondent Secretary of*
38 *State.*
39
40

41
42 **INTERROGATORY NO. 1:** Do you claim that the respondent Secretary of State
43 committed any error, omission, mistake, misconduct, neglect, or wrongful act relating to the
44 2004 Governor's election?
45
46
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 7

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1 **ANSWER:** Yes. Although the issue will not be tried in this case, WSDCC notes
2
3 that the Secretary of State has wrongfully withheld the monies WSDCC deposited in
4
5 connection with its request for the manual recount that resulted in Christine Gregoire being
6
7 duly certified by the Legislature as the Governor of Washington rather than Mr. Rossi.
8
9 WSDCC's investigation is ongoing, and in particular WSDCC has not yet deposed the
10
11 Secretary of State or any of his employees. Should this investigation uncover any additional
12
13 responsive information, WSDCC will supplement its response.
14

15
16 **INTERROGATORY NO. 2:** If your answer to the preceding Interrogatory was
17
18 anything other than an unequivocal "no", then for each error, omission, mistake, misconduct,
19
20 neglect, or wrongful act you claim the respondent Secretary of State committed, please:
21

- 22
- 23 (a) state what you claim that error, omission, mistake, misconduct, neglect,
24 or wrongful act was;
 - 25
 - 26 (b) state whether you claim that error, omission, mistake, misconduct,
27 neglect, or wrongful act caused Ms. Gregoire to be declared duly elected
28 even though she did not receive the highest number of legal votes; and
29
 - 30 (c) if you claim it did, explain exactly how you claim it did.
31

32 **ANSWER:**

33
34 See answer to Interrogatory No. 1.
35
36

37
38 **INTERROGATORY NO. 3:** Please identify every person with any knowledge
39
40 concerning your answer to Interrogatory Nos. 1-2 above, along with a brief description of
41
42 the subject matter of that person's knowledge.
43

44 **ANSWER:**
45
46
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 8

[15934-0006-000000/SL050700.056]

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1 The Secretary of State and his staff have full knowledge of WSDCC's demand for
2 repayment of its deposit and the Secretary's refusal to do so. In addition, the Secretary of
3 State, employees of the Secretary of State, and county auditors and elections officials have
4 general knowledge relating to whether the Secretary fulfilled his duties and committed
5 errors, omissions, mistakes, misconduct, neglect, or wrongful acts.
6
7
8
9

10
11
12 **INTERROGATORY NO. 4:** Please identify every document that supports, is
13 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 1-2 above.
14

15
16 **ANSWER:**

17
18 With the exception of communications from WSDCC requesting repayment, all of
19 which were sent to the Secretary of State's office and are in his possession, WSDCC is not
20 currently aware of any documents that support or otherwise relate to its answers to
21 Interrogatory Nos. 1 and 2, above.
22
23
24
25

26
27
28 **Failure To Perform Obligations Alleged Against The Respondent Secretary Of State**

29 *Without specifying the "respondents" to which it refers, the Election Contest Petition*
30 *states that "Respondents and their agents have failed to perform their obligations under the*
31 *constitutions of the State of Washington and the United States and elections laws" (2nd*
32 *para., Sec. IV), and that "Respondents ... failed to implement procedures to avoid mistakes,*
33 *errors, and alteration or submission of invalid votes" (3rd para., Sec. IV). The following*
34 *Interrogatories ask you to disclose your claims and facts (if any) with respect to one of those*
35 *respondents - i.e., the respondent Secretary of State.*
36

37
38 **INTERROGATORY NO. 5:** Do you claim the respondent Secretary of State failed
39 to perform any obligation with respect to the 2004 Governor's election?
40

41
42 **ANSWER:**

43
44 See Answer to Interrogatory No. 1, above.
45
46
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 9

[15934-0006-000000/SL050700.056]

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1 **INTERROGATORY NO. 6:** If your answer to the preceding Interrogatory was
2 anything other than an unequivocal "no", then for each obligation you allege the respondent
3 Secretary of State failed to perform, please:
4

- 5
6 (a) identify that obligation;
7
8 (b) identify the specific constitutional provision or specific law which you
9 claim created that obligation;
10
11 (c) state how you claim the respondent Secretary of State failed to perform
12 that obligation;
13
14 (d) state whether you claim that failure by the Secretary of State caused Ms.
15 Gregoire to be declared duly elected even though she did not receive the
16 highest number of legal votes; and
17
18 (e) if you claim it did, explain exactly how you claim it did.
19
20

21
22 **ANSWER:**

23
24 See answers to Interrogatory Nos. 1 and 2, above.
25
26

27
28 **INTERROGATORY NO. 7:** Please identify every person with any knowledge
29 concerning your answer to Interrogatory Nos. 5-6 above, along with a brief description of
30 the subject matter of that person's knowledge.
31

32
33 **ANSWER:**

34
35 See answer to Interrogatory No. 3, above.
36
37

38
39 **INTERROGATORY NO. 8:** Please identify every document that supports, is
40 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 5-6 above.
41

42
43 **ANSWER:**

44
45 See answer to Interrogatory No. 4, above.
46
47

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
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Alleged Error In The Secretary Of State's Certification

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

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

ANSWER:

No.

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

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

ANSWER:

See answer to Interrogatory No. 9, above.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
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1
2
3 **INTERROGATORY NO. 11:** Please identify every person with any knowledge
4 concerning your answer to Interrogatory Nos. 9-10 above, along with a brief description of
5 the subject matter of that person's knowledge.
6
7

8
9 **ANSWER:**

10 See answer to Interrogatory No. 9, above.
11
12

13
14 **INTERROGATORY NO. 12:** Please identify every document that supports, is
15 inconsistent with, or otherwise relates to your answer to Interrogatory Nos. 9-10 above.
16
17

18
19 **ANSWER:**

20 See answer to Interrogatory No. 9, above.
21
22

23
24 ***Illegal Votes Apparently Given To Gregoire And Rossi***

25 *The Election Contest Petition states that "it appears that a sufficient number of*
26 *illegitimate, invalid and/or illegal votes has been given to Ms. Gregoire that, if taken from*
27 *her, would reduce the number of her legal votes below the number of votes given to Mr.*
28 *Rossi, after deducting therefrom the illegal votes that may be shown to have been given to*
29 *him. RCW 29A.68.110" (Sec. VLB.10).*
30

31 *The Petitioners' February 22 answers to the intervenor Democrats' discovery*
32 *requests further maintain that Petitioners base their contentions as to the candidate for*
33 *whom those illegal votes were cast on facts such as direct evidence (e.g., "the specific*
34 *ballots cast illegally" and "testimony from the illegal voters ") and circumstantial evidence*
35 *(e.g., "a proportional analysis", "proportional allocation" by precinct, or "media reports").*
36 *See Petitioner Rossi Campaign 's February 22 answers to the Democrats' Interrogatory*
37 *Nos. 3, S, 7, 9, 14, & 16.*
38

39 *The following Interrogatories ask you to fully disclose your facts concerning every*
40 *illegal vote alleged in this election contest.*
41

42 **INTERROGATORY NO. 13:** With respect to the 2004 Governor's election,
43
44 please:

- 45
46 (a) state the total number of illegitimate, invalid, or illegal votes you claim
47 were apparently given to Ms. Gregoire; and

RESPONDENT SECRETARY OF STATE'S
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1 (b) state the total number of illegitimate, invalid, or illegal votes you claim
2 were apparently given to Mr. Rossi;
3

4 **ANSWER:**
5

6 This request is not clear. To the extent it is asking for information that WSDCC has
7 concerning the gubernatorial candidate for whom an allegedly illegal voter's vote was
8 allegedly cast, WSDCC answers as follows:
9

10 (a) WSDCC is currently aware of 5 allegedly illegal votes for Gov. Gregoire that
11 were apparently counted.
12

13 (b) WSDCC is currently aware of 11 allegedly illegal votes for Mr. Rossi that were
14 apparently counted.
15

16 Attached hereto as Exhibit A is a list of these voters. Twelve of these voters were
17 identified by the Petitioners as allegedly illegal votes. The remaining four were named in
18 the identified newspaper articles. WSDCC's investigation is ongoing, and it will supplement
19 its answer should the investigation uncover any additional information.
20

21 To the extent this request is asking for something else, WSDCC objects as vague and
22 ambiguous.
23

24 **INTERROGATORY NO. 14:** Please:
25

26 (a) identify the voters in whose name you claim illegitimate, invalid, or
27 illegal votes were cast in the 2004 election - including each such voter's
28 full name and, to the extent available to you, that voter's residence
29 address, telephone number, voter ID or registration number, county
30 voting precinct, and date of birth;
31

32 (b) for each voter you identify, briefly state the reason you claim their vote
33 was illegitimate, invalid, or illegal (e.g., felon, deceased, voted twice, cast
34 by person other than the registered voter, etc.);
35
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- 1 (c) for each voter you identify, state the candidate for whom you claim that
2 voter's vote was apparently cast in the 2004 Governor's election;
3
4 (d) for each voter you identify, state every type of direct or circumstantial
5 evidence you rely upon for your claim concerning the gubernatorial
6 candidate for whom that voter's vote was apparently cast (e.g.,
7 proportional analysis, voter testimony, etc.).
8

9
10 To facilitate the prompt and orderly evaluation of the illegal votes you claim were cast in the
11 2004 Governor's election, please provide your answers in the matrix format illustrated
12
13 below.
14

15 **ANSWER:**
16

17 Other than those voters listed in Exhibit A, WSDCC does not currently have a list of
18 voters in whose name it claims illegitimate, invalid, or illegal votes were cast in the 2004
19 election. WSDCC has requests outstanding to various county auditors and election officials
20 for the requested information and expects to have it available for the May 6 disclosure date
21 set by the Court. To the extent WSDCC has documentation available currently that
22 corroborates or contradicts the Petitioners' claims regarding their list of illegal voters, it will
23 make those documents available for inspection. The information that WSDCC has
24 concerning the gubernatorial candidate for whom an allegedly illegal voter's vote was
25 allegedly cast is listed in Exhibit A. To the extent WSDCC has copies of these newspaper
26 articles, it will make them available for review and/or copying.
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	(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	reasons 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								

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

ANSWER:

The persons listed in Exhibit A as allegedly having cast allegedly illegal votes have knowledge related to whether they were entitled to vote, whether they voted, for whom they voted in the gubernatorial election. County election officials and the reporters credited with writing the listed newspaper articles have similar information.

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

ANSWER:

WSDCC will produce copies of the listed newspaper articles to the extent it has copies.

RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 15

[15934-0906-000000/SI.050700.056]

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

2 *The Election Contest Petition states that "As a result of Respondents' errors,*
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" (Sec.*
5 *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*
8 *that "the votes of lawfully registered voters were not counted, and the failure of the*
9 *Respondents to count them, when presented with evidence of Respondents' errors, was*
10 *arbitrary, capricious, wrongful, and a violation of their obligations under Washington's*
11 *election laws" (5th para., Sec. VI).*

12 In addition to the statements Petitioners refer to by individuals whose votes for Mr.
13 Rossi were rejected, their February 22 answers to the intervenor Democrats' discovery
14 requests indicate that Petitioners base their contentions in this case concerning the candidate
15 for whom votes were cast on facts such as direct evidence (e.g., "the specific ballots cast
16 illegally" and "testimony from the illegal voters") and circumstantial evidence (e.g., "a
17 proportional analysis ", "proportional allocation" by precinct, or "media reports'). See the
18 Petitioner Rossi Campaign's February 22 answers to the Democrats' Interrogatory Nos. 3, 5,
19 7, 9, 14, & 16.

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

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

27 **ANSWER:** No.

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

- 30 (a) state the total number of lawful votes for **Mr. Rossi** that you claim were
31 not counted as a result of errors, omissions, misconduct, neglect,
32 wrongful acts, irregularities, or improper conduct of elections officials;

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- 1 (b) state the total number of unlawful votes for **Mr. Rossi** that you claim
2 were counted as a result of errors, omissions, misconduct, neglect,
3 wrongful acts, irregularities, or improper conduct of elections officials;
4 and
5
6 (c) state the total number of lawful votes you claim were cast for **Mr. Rossi**
7 in the 2004 governor's election.;

8
9
10 **ANSWER:**

11 (a) WSDCC is not currently aware of any lawful votes for Mr. Rossi that were not
12 counted as a result of errors, omissions, misconduct, neglect, wrongful acts, irregularities, or
13 improper conduct of elections officials and it therefore does not know how many such
14 lawful votes, if any, were not counted. WSDCC refers the Secretary to its answer to
15 Interrogatory No. 20.
16
17

18 (b) To date, WSDCC is only aware of those unlawful votes listed in response to
19 Interrogatory Nos. 13 and 14, above.
20

21 (c) With reference to the answers and information provided herein, WSDCC
22 currently believes that 1,373,221 lawful votes were cast for Mr. Rossi in the 2004 governor's
23 election.
24

25 WSDCC's investigation is ongoing and it will supplement its answer to the extent the
26 investigation uncovers additional responsive information.
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31 **INTERROGATORY NO. 19:** With respect to the 2004 Governor's election,
32 please:
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- 34 (a) state the total number of lawful votes for **Ms. Gregoire** that you claim
35 were not counted as a result of errors, omissions, misconduct, neglect,
36 wrongful acts, irregularities, or improper conduct of elections officials;
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 17

[15934-0006-000000/SL050700.056]

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- 1 (b) state the total number of unlawful votes for **Ms. Gregoire** that you claim
2 were counted as a result of errors, omissions, misconduct, neglect,
3 wrongful acts, irregularities, or improper conduct of elections officials;
4 and
5
6 (c) state the total number of lawful votes you claim were cast for **Ms.**
7 **Gregoire** in the 2004 governor's election.;

8
9
10 **ANSWER:**

11 (a) WSDCC is currently aware that King and Pierce counties failed to count a
12 number of provisional and/or absentee ballots and is investigating the extent to which those
13 failures were the result of errors, omissions, misconduct, neglect, wrongful acts,
14 irregularities, or improper conduct of elections officials. WSDCC therefore does not know
15 how many such lawful votes, if any, were not counted.
16
17

18 (b) To date, WSDCC is only aware of those unlawful votes listed in response to
19 Interrogatory Nos. 13 and 14, above.
20

21 (c) With reference to the answers and information provided herein, WSDCC
22 currently believes that 1,373,355 lawful votes were cast for Gov. Gregoire in the 2004
23 governor's election.
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26 WSDCC's investigation is ongoing and it will supplement its answer to the extent the
27 investigation uncovers additional responsive information.
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37 **INTERROGATORY NO. 20:** Please:

- 38 (a) for each lawful vote you claim was cast in the 2004 election but not
39 counted as a result errors, omissions, misconduct, neglect, wrongful acts,
40 irregularities, or improper conduct of elections officials, identify the voter
41 in whose name you claim that lawful vote was cast - including each such
42 voter's full name and, to the extent available to you, that voter's residence
43 address, telephone number, voter ID or registration number, county
44 voting precinct, and date of birth;
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
AND DEMOCRATS' RESPONSES
THERE TO - 18

[15934-0006-000000/SL050700.056]

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- 1 (b) for each vote you identify, briefly state the error, omission, misconduct,
2 neglect, wrongful act, irregularity, or improper conduct you claim caused
3 that lawful vote to not be counted (e.g., late issuance of military ballot,
4 refusal to correct error brought to election official's attention, etc.);
5
6 (c) for each vote you identify, state the candidate for whom you claim that
7 vote was apparently cast in the 2004 Governor's election; and
8
9 (d) for each vote you identify, state every type of direct or circumstantial
10 evidence you rely upon for your claim concerning the gubernatorial
11 candidate for whom that vote was apparently cast (e.g., proportional
12 analysis, statement by the voter, etc.).
13
14

15 To facilitate the prompt and orderly evaluation of the lawful votes you claim were not
16 counted in the 2004 Governor's election, please provide your answers in the matrix format
17 illustrated below.
18
19

20
21 **ANSWER:**
22

23 WSDCC's answer to this Interrogatory does not currently lend itself to presentation
24 in the matrix format suggested by the Secretary of State. Although its investigation is not
25 yet complete, WSDCC is currently aware of the following categories of lawful votes in the
26 2004 General Election that may not have been counted:
27
28
29

30 (1) According to an April 4, 2005 King County report, a copy of which the
31 Secretary already has, approximately 93 lawful ballots were not counted in King County.
32 According to an April 8, 2005 letter from King County, one additional lawful ballot was
33 apparently recently located in King County.
34
35

36 (2) According to an April 5, 2005 article in the *News-Tribune*, Pierce County
37 recently discovered a "small number" of uncounted lawful ballots.
38

39 (3) King County may have rejected a number of lawful provisional and/or
40 absentee ballots because (a) King County failed to completely canvass the ballot; (b) King
41 County wrongfully cancelled a voter's registration; or (c) King County wrongly rejected
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RESPONDENT SECRETARY OF STATE'S
DISCOVERY REQUESTS TO DEMOCRATS
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THERE TO - 19

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