

No. 76321-6

**SUPREME COURT
OF THE STATE OF WASHINGTON**

**DAVID McDONALD, RONALD TARO SUYEMATSU
et al.,
Petitioners**

v.

**SECRETARY OF STATE SAM REED, et al.,
Respondents**

**PETITIONERS' SUBMISSION OF ADDITIONAL
AUTHORITIES, PROPOSED ORDER, AND
DECLARATIONS**

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Petitioners submit supplemental authorities, copies of which are provided for the convenience of the Court, Respondents, and Intervenors, and a proposed order. Further, Petitioners file herewith additional declarations of voters whose ballots have not been counted due to errors by election officials and summarize below those errors not previously described.

I. SUPPLEMENTAL AUTHORITY

Petitioners submit two additional Washington authorities of great significance to the pending Petition: *Foster v. Sunnyside Valley Irrigation Dist.*, 102 Wn.2d 395 (1984), and *Sudduth v. Chapman*, 88 Wn.2d 247 (1977). These decisions relate to the following issues:

- The right to vote is fundamental and is protected to a greater degree by the Washington Constitution than by the United States Constitution. *Foster*, 102 Wn.2d at 404.
- The State must show that governmental action that limits the right to vote is based on a compelling state interest and is the least restrictive alternative for achieving that interest. *Id.* at 407-8, 410.
- Statutes that limit constitutional rights, including those involving signature verification, should not be applied "any further than is necessary to fairly guard against fraud and mistake." *Sudduth*, 88 Wn.2d at 251-52 (issuing writ of mandamus).

- The Secretary of State has a duty to take affirmative steps to ensure the accuracy of voter registration records and may not rely on local election officials, and his failure to do so should not be allowed to restrict a voter's right to participate in the election process. *Id.* at 253-54.
- Election officials are required to take action when it becomes known that their records or decisions are wrong, incomplete, or not uniform. *Id.* at 255.
- Technicalities must not be allowed to "result in the denial of the franchise," and signatures have a "presumption of validity." *Id.*
- Signatures should not be rejected where a substantial number of errors are discovered in a short period of time, election officials are made aware of errors but do not take steps to correct them, and the signatures in question could affect the outcome. *Id.*

Additionally, Petitioners submit an order entered by King County Superior Court Judge Doerty on December 19, 2003, in *In Re Election of Medina City Counsel Position 4*, Cause No. 03-2-41552-9 SEA. *See Rava Decl. Ex. G.* Judge Doerty orders the King County Canvassing Board to consider during a manual recount certain votes, including votes that had been previously canvassed and rejected. His ruling was grounded in the policies underlying Washington's election code and the constitutional rules prohibiting technical restrictions on the franchise.

II. ADDITIONAL ERRORS RESULTING IN DISENFRANCHISEMENT OF WASHINGTON VOTERS

The newly submitted declarations are those of Joleen Allen (“Allen Decl.”), Michael Carman (“Carman Decl.”), Cynthia Cunningham (“Cunningham Decl.”), Allen Draher (“Draher Decl.”), Miles Erickson (“Supp. Erickson Decl.”); Dean Floudaras (“Floudaras Decl.”), Sushan Han (“Han Decl.”), Nancy Josephson (“Josephson Decl.”), Jamie Rene Muir (“Muir Decl.”), Diane Oxford (“D. Oxford Decl.”), Jack Oxford (“J. Oxford”), Steve Pham (“Pham Decl.”), Larry Phillips (“Phillips Decl.”), Brittany Pulliam (“Pulliam Decl.”), William C. Rava (“Rava Decl.”), Jeffrey Tinnea (“Tinnea Decl.”), Carrie Valderas (“Valderas Decl.”), and Melva Lee Williamson (“Williamson Decl.”).

Additionally, descriptions of voters whose declarations were submitted with Petitioners’ reply brief but not described therein are based on the Declaration of Ricardo S. D’Jaen (“D’Jaen Decl.”); Declaration of Coby Henning (“Coby Henning Decl.”); and Declaration of Terri Rook (“Rook Decl.”).

Finally, Petitioners are resubmitting the Declaration of Arthur Warner in Support of Petition for Writ of Mandamus with the exhibit that was missing from the original submission.

A. Signature Verification Errors

Larry Phillips, the Chair of the King County Council, voted by absentee ballot. Although he has never received written notice from King County or the Secretary of State, Mr. Phillips’s ballot was rejected due to

signature verification issues. On December 12, he volunteered to help with the Democratic Party's effort to contact voters whose ballots have not yet been counted and, in reading the list of voters, found his own name.

Mr. Phillips called King County and eventually spoke with Dean Logan, Director of King County Elections and Records Division, who informed him that although King County records indicated that his absentee ballot had been correctly filled out, signed, and mailed, it was rejected because King County had no digital record of his signature on file. King County's records, however, did show him as a registered voter that had voted in numerous election cycles. Mr. Logan could not explain why his signature was missing but speculated that it may have been deleted while King County converted paper registration files into a digital format. No apparent effort was made to obtain the signature file from the Secretary of State, and thus Mr. Phillips's ballot was apparently not counted due to a computer error. *See Phillips Decl.* Mr. Logan has also stated that this problem may have resulted in other legitimate votes being rejected, and has stated that King County will count any such those votes because they were "rejected on a false premise." *See Rava Decl. Ex. F.*

Carrie Valderas was forced to vote by provisional ballot after King County failed to update her registration file as she requested. On November 8, she checked the King County website to determine whether her ballot had been counted and learned that it had been rejected due to signature verification issues. She immediately called King County to determine how to verify her signature and was told that she would receive

a letter with a signature verification form to return. Four days later, when no letter had arrived, she called again. She offered to come to the Auditor's office in person on a day she did not work, but was ensured that she need not do so because she would receive a letter allowing her to verify her signature with a return mail form. On November 16, she had still not received a letter, so she called King County a third time. This time she was told that she had been misinformed in her last two calls, that King County did not send letters to provisional ballot voters, and that she would have to come in person to verify her signature by 4:30 p.m. that same day. By that time, however, she was unable to leave work in order to make it to the Auditor's office by the deadline. *See Valderas Decl.*

Michael Carman voted by absentee ballot in Whitman County where he attends college. When he returned from Thanksgiving break, he had a letter dated November 22 from Whitman County that his "provisional" ballot had been rejected due to signature verification problems. Mr. Carman drove through a snowstorm the next day to speak to the Whitman County Auditor in person. He was informed by the Auditor that his signature did not meet the three-point comparison test. When shown the signature on the ballot, Mr. Carman informed the Auditor that he had signed it and identified three points where his signature matched. The Auditor refused to look at identification Mr. Carman produced to further verify his signature. Mr. Carman also asked why he had not received direct notice until November 22 and was told that the Auditor published a list of such voters in a local newspaper, and that the

Auditor had no responsibility to contact voters whose ballots had been rejected. *See Carman Decl.* Sushan Han encountered similar problems. She voted by absentee ballot, which she delivered in person to the Whitman County Auditor's Office several days before November 2. On November 22 she also received a letter from Whitman County stating that her ballot was rejected due to signature verification problems. As with Mr. Carman, the notice to Ms. Han came too late and she has had no meaningful opportunity to verify her signature. *See Han Decl.*

Cynthia Cunningham never requested an absentee ballot, but King County inexplicably sent her two. She brought one of the ballots, which she had marked for use as a voting guide, to her polling place and asked to vote as a poll voter. She was informed that she had to cast a provisional ballot or use her absentee ballot. She signed and submitted her absentee ballot, which was placed in a provisional ballot envelope provided by poll workers which she also signed. She used the provisional ballot stub she received to check the King County website regarding the status of her ballot on November 7, 10, 12 and 16, but each time the website merely stated that the disposition of her ballot was unavailable at that time. On November 17 she checked again, at which time she learned that her vote had not been counted due to signature verification issues. Due to King County's deadline, failure to provide direct notice, and late notice on its website, she was unable to verify her signature. *See Cunningham Decl.*

Jamie Rene Muir is registered to vote in Lewis County, where all voters are required to vote by mail. Ms. Muir did not receive her mail-in

ballot, so called the Lewis County Auditor's office. During the discussion she learned that her address in Lewis County's records contained a typo, which she updated over the phone. She was told she should come in to the Auditor's office to vote in person. She did so, and was given a provisional ballot after showing photo identification. While there, she learned that her address had not been corrected, so she gave the election worker her correct address a second time. On or about December 3 or 4, Ms. Muir received a letter from Lewis County stating that her signature did not match the voter registration form and therefore had not been counted. Although the letter was dated in mid-November, Lewis County had sent it to the wrong address, and it was not forwarded by the post office until later. Upon receiving the letter she contacted Lewis County Auditor Gary Zandell, who stated, "you people need to get over it," and that she should "let it go." He told her that her vote would not count. Had Lewis County updated her address as she twice requested, Ms. Muir would have verified her signature in time for her vote to be counted. *See Muir Decl.*

Coby Henning is the son of Cheryl & Donald Henning who, as described in Petitioners' reply brief, were disenfranchised as well. Coby Henning voted absentee but took the ballot to a polling place and signed it in front of a poll worker. On November 16 he received a letter from Klickitat County informing him that he would be required to update his signature by returning a signature verification card by mail or in person. He knew it was too late to mail the card in to meet the certification deadline and was unable to return the card in person due to his work

schedule. *See* Coby Henning Decl. Steve Pham received notice from King County that his absentee ballot had been rejected due to signature verification problems. Mr. Pham, however, works full time and is also a student and, due to his schedule, forgot to return the letter he had received. *See* Pham Decl.

Jeffery Tinnea, who is registered to vote in King County, voted by absentee ballot because he is attending school at Eastern Washington University. Although King County mailed his absentee ballot to his school address, it inexplicably mailed a notice that he was required to verify his signature by November 16 to his permanent address. As a result, the notice was not forwarded to Mr. Tinnea until November 16, too late to meet King County's deadline. *See* Tinnea Decl. Likewise, Allen Draher is registered to vote in King County and voted by absentee ballot. Although King County sent him notice that he was required to verify his signature, he did not see it until the evening of November 16 because he was traveling abroad. *See* Draher Decl. Ricardo D'Jaen also voted by absentee ballot. He was required to be out of the country for work until November 17. When he returned home, he had a letter from King County notifying him he would be required to verify his signature, but it was too late to do so at that time. *See* D'Jaen Decl. Likewise, Nancy Josephson did not see the notice King County sent her until November 16 due to a trip to Disneyland with her family, and therefore missed King County's deadline. *See* Josephson Decl.

Dean Floudaras voted by absentee ballot in Thurston County. He received a notice that his ballot had been rejected because he had signed his name where he was supposed to print it and vice versa. The letter stated that the only way to correct the problem was to go in person to the Auditor's office. His ballot was rejected for a mere technicality. *See Floudaras Decl.*

Terri Rook voted by absentee ballot. Like Larry Phillips, she never received any notice from King County that her ballot had been rejected due to signature verification problems. Ms. Rook learned of the problem from the Gregoire campaign on the evening of November 16, but was unable to verify her signature due to King County's deadline. *See Rook Decl.* Two to three weeks after the election, Brittany Pulliam, did receive a request from King County that she sign and mail a letter to King County in order for it to print her new married name on future ballots, but the notice did not indicate that her absentee ballot, which was issued in her maiden name, would not be counted, nor did it give her a deadline to return the form. Ms. Pulliam has since learned that her vote was not counted. *See Pulliam Decl.* Likewise, Joleen Allen received a letter from King County approximately a week after the election, which asked for an updated signature but did not inform her that her ballot was not being counted. She signed and returned the letter as soon as she got it, but has since learned that her name appears on a list of voters whose ballots were not counted. Her signature likely did not match because Ms. Allen suffers from arthritis

in her writing hand that has affected her ability to sign documents. *See* Allen Decl.

As further evidence of the fact that King County's signature match decisions have been, in many cases, wrong, Petitioners submit the declaration of Aravind Swaminathan. After being forced to vote provisionally due to numerous errors by the King County Elections Office, Mr. Swaminathan's ballot was rejected due to signature verification problems. Mr. Swaminathan learned about this problem in time to correct it. There is, however, no explanation as to why election officials rejected his signature. *See* Rava Decl. Ex. B. Likewise, Helen F. Printz's absentee ballot was rejected due to signature verification problems. Ms. Printz, who received notice of the signature problem from the Gregoire campaign, completed documentation to verify her signature, which the Gregoire campaign returned to King County so her vote could be counted. Again, there is no explanation as to why election officials rejected her signature. *See id.* Ex. B. Diane and Jack Oxford's signatures are also distinctive, but were rejected without explanation. Unfortunately, their votes have not been counted. *See* D. Oxford Decl; J. Oxford Decl.

B. Registration Errors

After moving to King County in 2003, Melva Lee Williamson registered to vote in Washington by filling out a voter registration card which was then mailed to the Secretary of State. However, when she arrived at her precinct on election day, she was told she would have to vote a provisional ballot because her name was not in the polling book. She

never received any notice regarding her ballot, but called King County to determine if her vote was counted on December 10. She was told that her vote had not been counted because her voter registration card was not signed. Ms. Williamson, however, recalls having signed her registration card. *See Williamson Decl.* Even if she had not, the King County Auditor was required by law to promptly send Ms. Williamson a verification notice that her registration was not complete. *See RCW 29A.08.110.*

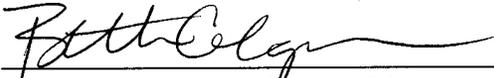
Ms. Williamson did not receive any such notice. *See Williamson Decl.*

C. Ballot Transferred to Wrong County

In Petitioners' Reply Brief they detailed how Miles Erickson's ballot was incorrectly transferred from Whatcom to King County.

Whatcom County has since indicated that due to the errors identified by Petitioners, it will reconsider Mr. Erickson's ballot. *See Supp. Erickson Decl. Ex. A.*

RESPECTFULLY SUBMITTED this 13th day of December, 2004.

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