

EXHIBIT E

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WASHINGTON STATE REPUBLICAN
PARTY,)

Applicant-Intervenor,)

v.)

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE, ET AL.,)

Plaintiff,)

v.)

KING COUNTY RECORDS, ELECTIONS
AND LICENSING SERVICES DIVISION,)

Defendant.)

No. 04-2-36048-0 SEA

MOTION FOR TEMPORARY
RESTRAINING ORDER

I. RELIEF REQUESTED

Plaintiff the Washington Republican Party moves for a temporary restraining order under CR 65 ordering Defendants Dean Logan, in his official capacity as Director of King County Records, Elections, and Licensing Services; and the King County Department of Records, Elections, and Licensing Services to ensure that provisional votes are properly verified.

II. STATEMENT OF FACTS

On November 12, 2004, this Court entered an order making public the identity of voters whose signatures were deficient on provisional ballots. As a result of the Court's

1 order, political parties have investigated the signatures by attempting to contact the
2 provisional voters directly. The Republican Party has encouraged such voters to make
3 direct contact with the Division of Elections to update the signatures on their provisional
4 ballots. In addition, the Division of Elections has indicated that it will accept updated
5 signatures delivered to the Division of Elections by third parties such as the political
6 parties.

7 Dean Logan, the Director of the Division of Elections set forth in an e-mail the
8 procedures the County is using with respect to verifying the provisional ballots at issue.
9 That e-mail is attached to the Verified Complaint as Exhibit A. Where a signature on a
10 provisional ballot does not match the signature on the original voter registration, the
11 Division of Elections has indicated that it will accept an updated voter registration card and
12 compare the updated card to the signature on the provisional ballot instead of comparing
13 the updated signature with the original voter registration card.

14 By accepting new signatures and comparing them only to the provisional ballot
15 signatures, the Division of Elections does not take adequate procedural steps to ensure that
16 the signature is from the proper registered voter. For example, if on election day a person
17 improperly cast a provisional ballot on behalf of a relative who was out-of-state and signed
18 that relative's name, it is possible that the same person has again signed the updated
19 signature form that has been delivered to the Division of Elections by third parties.
20 Because the signature is not being compared to the original signature on the voter
21 registration record, the process is open to fraud or impropriety.

22 III. STATEMENT OF ISSUES

23 Should the Court enter a temporary restraining order against Defendants ordering
24 them to compare updated signatures with original voter registration signatures or ordering
25 Defendants to make direct contact with the affected provisional voters to seek updated
26 signatures directly from the voter and not through third parties.
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IV. EVIDENCE RELIED UPON

Plaintiff relies upon its Verified Complaint and Exhibit thereto.

V. AUTHORITY

The Washington standards for the issuance of a TRO and a preliminary injunction are as follows:

It is an established rule in this jurisdiction that one who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him. *Tyler Pipe Industries, Inc. v. Wash. St. Dept. of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982).

Plaintiff has a clear and equitable right to a temporary restraining order because Defendants have failed and are failing to ensure that provisional ballots are being handled with adequate process designed to ensure that lawful votes are counted properly.

In 2002, Congress passed the Help America Vote Act, 42 U.S.C. §§15301 et seq. (“HAVA”). Among other things, HAVA establishes provisional voting requirements for an individual who declares that he or she is a registered and eligible voter in the appropriate jurisdiction, but whose name does not appear on the official list of eligible voters for the polling place. *See* 42 U.S.C. § 15482. Such voters may cast provisional ballots. *Id.*

Pursuant to RCW 29A.04.611 and to implement HAVA, the Secretary of State of Washington amended the Washington Administrative Code (WAC 434-253-043; 045; 047; and 049) to set forth procedures for provisional balloting in Washington. Until the Court’s November 12, 2004 Order, however, Washington law was silent as to whether voters could correct deficiencies in provisional ballots and the methods for undertaking such corrections.

1 Provisional ballots are not automatically counted. The circumstances surrounding
2 the provisional ballot must first be investigated by the county auditor and certain
3 procedures must be followed under WAC 434-253-047:

4 Upon receipt of the provisional ballot, including provisional
5 ballots from other counties or states, the auditor must
6 investigate the circumstances surrounding the provisional
7 ballot prior to certification of the primary or election. A
8 provisional ballot cannot be counted unless the voter's name,
9 signature and the date of birth, if available, matches a voter
10 registration record.

11 Once the provisional ballot has been investigated, disposition
12 of the ballot is as follows:

13 (1) If there is no record of the voter ever having been
14 registered, the voter must be offered the opportunity to
15 register and the provisional ballot will not be counted.

16 (2) If the voter was previously registered and later
17 canceled and the auditor determines that the cancellation was
18 in error, the voter's registration will be immediately restored
19 and the provisional ballot counted.

20 (3) If the auditor determines that the cancellation was not
21 in error, the voter shall be afforded the opportunity to
22 reregister, and the provisional ballot will not be counted.

23 (4) If the voter is a registered voter but has voted a ballot
24 other than the one which the voter would have received at his
25 or her designated polling place, the auditor must ensure that
26 only those votes for the positions or measures for which the
27 voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county or
state, the auditor shall forward the ballot and a corresponding
voter guide, or other means by which the ballot can be
interpreted including rotation if applicable, within five
working days after election day to the supervisor of elections
for the county for which the voter is resident. If the
provisional ballot envelope is not signed by the voter, a copy
of the poll book page shall be included. If the county is not
known, it shall be forwarded to the secretary of state, or
counterpart, for the state in which the voter is resident.

(6) If the auditor finds that an absentee voter who voted a
provisional ballot at the polls has also voted an absentee
ballot in that primary or election, the provisional ballot will
not be counted.

1 (7) If a provisional ballot was voted because a voter failed
2 to produce required identification, the ballot shall be counted
3 if the voter is otherwise eligible.

4 (8) Provisional ballots voted for reasons not covered by
5 this section shall be determined by the county canvassing
6 board.

7 The auditor will prepare a tally displaying the number of
8 provisional ballots received, the number found valid and
9 counted, the number rejected and not counted, and the reason
10 for not counting the ballots, as part of the canvassing process
11 and presented to the canvassing board prior to the
12 certification of the primary or election.

13 The Division's procedures fail to adequately confirm that the provisional voter is in
14 fact the original registered voter. Furthermore, the Secretary of State under the authority of
15 RCW 29A.04.611 has issued Emergency Rules addressing the use of provisional ballots.
16 The Emergency Rules were effective on August 24, 2002. WAC 434-243-047 addresses
17 the "disposition" of provisional ballots stating that "[u]pon receipt of the provisional ballot,
18 including provisional ballots from other counties or states, the auditor must investigate the
19 circumstances surrounding the provisional ballot prior to certification of the primary or
20 election. A provisional ballot cannot be counted unless the voter's name, signature and the
21 date of birth, if available, matches a voter registration record."

22 The Division is violating that provision of the Emergency Rules by allowing third
23 parties to bring signature from individuals who were listed as provisional ballot voters and
24 whose signature did not match the signature in the voter registration record. The Records
25 and Elections office is allowing provisional voters to change their signatures after the date
26 of the election effective for the November 2, 2004 election. By allowing third parties to
27 bring in documentation that changes the signature, the King County Records and Elections
Office has no way to ensure that the party who voted on the provisional ballot was the
actual voter who registered with King County.

Plaintiff's interest in having votes cast in accordance with the law is abridged when
steps are not taken to ensure that provisional ballots are properly investigated and handled

1 to determine whether the provisional ballots should be counted. Defendants' actions have
2 damaged Plaintiff's interests and Plaintiff will suffer irreparable injury if Defendants'
3 actions continue.
4

5 DATED this 16th day of November, 2004.

6
7 Davis Wright Tremaine LLP
8 Attorneys for Washington State Republican
9 Party

10 By 
11 Harry Korrell, WSBA #23173
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16 By _____
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