EXHIBIT F

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON STATE REPUBLIC PARTY, Applicant-Intervenor, v. WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al., Plaintiffs, v. KING COUNTY RECORDS, ELECTIONS AND LICENSING SERVICES DIVISION, et al., Defendants.	Case No. 04-2-36048-0 SEA MEMORANDUM OPINION AND ORDER *(clerk's action required)*

"It is the policy of the State of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. The election registration laws and the voting laws of the State of Washington must be administered without discrimination based upon race, creed, color, national origin, sex or political affiliation." RCW 29A.04.205.

We have arrived at the moment which all reasonable Washingtonians have dreaded for four years: the moment when the Court is asked to micro-manage an election. Everyone would agree that Court is not the proper place to decide an election, yet this has not stopped both Republicans and Democrats have rushed to Court at the last minute, seeking emergency restraining orders and injunctions, claiming all sorts of improprieties by the other side, with King County Records, Elections and Licensing Services Division and the Court "whipsawed" in the middle.

In situations like this, the Court needs to fall ball back on the fundamental principals of public disclosure, openness in government, the legal requirements for temporary restraining orders and the Constitution. In other words, the Court needs to follow the law.

THE PUBLIC DISCLOSURE ACT CLAIM

On November 12, 2004, this Court ordered King County to make public a list of 929 provisional ballot voters with questioned signatures. The Court was guided by two concepts central to the democratic process: the right of every lawfully registered voter to have his or her vote counted, and the public's right to an open and transparent electoral process, including open access to public voting records. These rights belong to all citizens, regardless of political party[1].

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[1] These rights are crystal clear in both case law and statute. In *Wesberry v. Sanders, 376 U.S. 1, 17 (1964),* the United States Supreme Court held:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as a good citizen, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

The Washington Public Disclosure Act states "It is hereby declared by the sovereign people of the state of Washington...(t)hat full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society". *RCW 42.17.010.* The Washington Public Disclosure Act is a strongly worded mandate for broad disclosure of public records, *Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127 (1978),* and the public record act's provisions are to be liberally construed to

In this case, King County admitted that the provisional ballot voter list would qualify as a public record if it existed in paper form, that other counties were releasing similar lists as public records and that both political parties in those counties were contacting provisional ballot voters with those lists. King County admitted that lists of all other registered voters, including absentees, were a matter of public record, yet argued that the federal Help America Vote Act (HAVA) somehow prevented disclosure. When read in context and together with other state and federal election statutes, however, it is clear that HAVA only precludes disclosure of for whom (or for what) the provisional voter voted, not whether that voter's ballot had been counted or the identity of that provisional voter. The Democratic Party, as a member of the public, has a right to the public election records in King County, just as the Republican Party and many others have a right to public election records in King County and elsewhere.

King County produced the list to plaintiff and the public shortly after it was ordered. Amid significant print, television, Internet and radio media coverage, plaintiff represented to the Court that its volunteers would try to contact every provisional voter on the list. In other words, public disclosure of the public documents and a free press likely provided more notice than letters mailed by King County would have.

PLAINTIFF'S OTHER CLAIMS

Although plaintiff did not request further relief in its motion, the underlying Complaint filed in this lawsuit goes much, much further, and the Court is obligated to either resolve the entire lawsuit in some manner or set it for trial. The Complaint asserts that King County not only violated the Washington Public Disclosure Act, but violated federal and state constitutions and state election law. Plaintiff's argument, taken to its logical end, would require election officials to treat provisional and absentee ballots the same, and would have ramifications far beyond King

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promote full access to public records, with it's exceptions to be narrowly interpreted. *Confederated Tribes v. Johnson, 135 Wn.2d 734, 746 (1998).*

County and the Washington Gubernatorial race. The Court cannot and will not grant further relief to plaintiff at this time for several reasons.

First, although King County misread HAVA, there is every indication that the King County Records, Election and Licensing Services Division acted professionally and intended to act in the public's best interest under immense pressure and under intense public scrutiny. Armies of lawyers and poll watchers examine King County's every move, threatening litigation and more. Under the circumstances, King County's prudence is understandable. Second, as pointed out above, the public disclosure of and publicity surrounding the 929 provisional ballots exceeded any notice that County mailed letters would have provided. Any failure by King County to affirmatively contact the provisional ballot voters has, under the limited facts presented to date, likely been cured. Third, to the extent that there is any Equal Protection or Due Process violation at all, the dispute is premature and not based on any actual evidence. This Court cannot rule on premature or hypothetical disputes, nor can it give advisory opinions. *See*, *Diversified Industries Development v. Ripley*, *82 Wn.2d 811, 815 (1973)*; *Washington Coalition for the Homeless v. DSHS*, *133 Wn.2d 894, 947 (1997)*(courts may only resolve justiciable controversies, which require an actual or existing dispute, as distinguished from a possible, dormant, hypothetical, speculative or moot disagreement, and which allow the judicial determination to be final and conclusive). At oral argument, the attorneys argued that there are no facts in dispute, yet many facts are unknown and may be unknowable. Plaintiff does not know, and may never know, how many of the provisional voters voted for its candidates. The Court does not know whether any voter was actually denied the right to have his or her vote counted, how many of the 929 provisional ballots in question or how many of the 36,000 other provisional ballots were eventually counted or the extent to which lack of computer access affected these ballots. The Court does not know what changes election officials, the executive branch or the legislative branch will make relating to possible uniformity in handling provisional

ballots across the state. Any decision by this Court on plaintiff's Constitutional claims would be based, at this point, on speculation and facts not part of the record. Lastly, there is a very real possibility that plaintiffs lack legal standing to raise the Constitutional issues asserted in their Complaint and that several necessary parties, including the Washington State Secretary of State and the State Attorney General, have not been named and/or served. *See, RCW 7.24.110.* Although plaintiff, as a member of the public, clearly has standing to raise the Public Disclosure Act claims, such is not the case with the rest of its claims. In a lawsuit like this, with its potential ramifications, it is essential that the proper parties be before the Court, that the record be complete and that the arguments be fully developed.

INTERVENOR'S CLAIMS

The Court granted applicant Washington State Republican Party's motion to intervene orally in open court as a matter of fundamental fairness, and so that their position could be heard by all. On the eve of certification, the Republican Party moves for a temporary restraining order, prohibiting King County from counting any of the provisional ballots brought in by any 3rd party. Rather, the Republican Party wants each of the provisional voters to come in to the elections office in person. Under Washington law, one seeking a temporary restraining order must show (1) that he or she 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 v. Washington State Department of Revnue, 96 Wn.2d 785 (792 (1982).* Here, Applicant-Intervenor cannot carry its burden on factors (1) and (3). There is no evidence before this Court and it is speculative as to what injury will occur should the Court not enter this TRO. Moreover, both parties have hinted that both Democrats and Republicans across the state may be the 3rd parties delivering provisional ballots to election offices. Most importantly, however, Applicant-Intervenor has not demonstrated that King County is acting unlawfully. Although it argues that there are alternative

ways to process the election, there is no showing that King County is violating the law, and therefore Applicant-Intervenor has not shown a clear legal right to the relief. As it is the moving party, it is Applicant-Intervenor's burden to demonstrate this, and they have not done so

A word needs to be said about possible voter fraud. The Court does not place a huge amount of weight on the allegations that both parties are delivering provisional ballots to election offices. What is clear is that there is no actual evidence of voter fraud presented to this Court, and that the Republican party's suggested remedy (that the voter actually come down to the office rather than having a 3rd party deliver it) does not protect against voter fraud since King County does not certify or verify the identities of even those people who show up in person. Indeed, the best protection against voter fraud is public disclosure, to the press and all citizens, of a list of all provisional ballot voters. That is exactly what the Court did on November 12, 2004. If it is shown later that one or both parties were actually engaged in voter fraud, we will find out, and the consequences flowing from any such misconduct will be serious and long-lasting indeed. But as in the Court's ruling denying the Democrats' claims, the Court cannot speculate and needs to rely on evidence. None has been presented here.

The Court will deny the requested relief in all respects except one: to preserve the status quo as much as possible, the Court will require King County to keep a list of the number of provisional ballots (to the extent it knows) that were delivered by 3rd parties. However, the ballots themselves may be processed and the election should proceed.

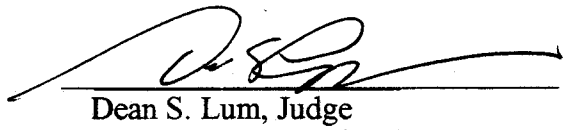
CONCLUSION

The Court granted plaintiff's TRO and Writ of Mandamus in part and ordered disclosure of the requested list of 929 provisional ballot voters. King County immediately complied. The Court's November 12, 2004 order stands. The rest of the Washington State Democratic Central Committee's requested relief is denied and dismissed without prejudice.

The Washington State Republican Party's motion to intervene is granted, but its motion for TRO is granted in part and denied in part. King County will be required to maintain a list of the number provisional ballots delivered to it by 3rd parties for purposes of appellate review, but will not be require to keep any of additional information about those ballots and may proceed with tabulating and counting them. The balance of Applicant-Intervenor's lawsuit is dismissed without prejudice. The certification should proceed tomorrow.

This litigation is concluded. King County should proceed to count the votes.

Dated this 16th day of November, 2004.



Dean S. Lum, Judge
King County Superior Court