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Court rules against Gregoire

Counties won't be forced to reinspect invalid ballots; but saga's not over

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OLYMPIA -- The state Supreme Court yesterday shot down Democratic gubernatorial candidate Christine Gregoire's best chance for a comeback, but the discovery of even more uncounted ballots in King County left Republicans livid.

The justices unanimously rejected a lawsuit that would have required counties to reinspect more than 3,000 previously disqualified absentee and provisional ballots.

Recount update
Keep tabs on the recount

Gregoire's hopes to prevail in a hand recount now rest largely on 573 King County absentee ballots that election officials say were wrongly disqualified because of a clerical error. Initially officials said there were 561 such ballots, but they revised that figure.

"Thank God King County found this mistake now instead of two weeks from now," Gregoire said.

Republicans, however, were fuming about the 573 new King County ballots. They were also upset late yesterday evening about a report from their observers at the King County recount facility that an additional 22 ballots had been discovered.

"This is the seventh time King County has made a mistake that has resulted in more votes," said state Republican Party Chairman Chris Vance. "At this point it is impossible for us to determine whether they are colossally incompetent or completely corrupt."

Vance vowed to fight.

"Those 22 ballots should absolutely not be counted," Vance said. "They have not been in a secure location. There is no postmark on them. We will absolutely contest those votes."

Bill Huennekens, King County's superintendent of elections, confirmed that 22 ballots were found and said they will be presented to the county canvassing board today.

He said that when he became aware of the 573 ballots, staff was instructed to review everything again. The 22 additional ballots -- 20 absentee and two provisional -- were found in base units of voting machines when crews picked them up from hundreds of precincts around the county.

Huennekens said he cannot say to what degree the ballots had been secured.

Earlier in the day, Republican Gov.-elect Dino Rossi commented on the 573 misfiled votes.

"It's just too much of a coincidence. They just keep coming up with votes, and it has never benefited me," Rossi said. "We're not going to take anything lying down, I'll guarantee you that."

He said he wants to make sure the new King County ballots are thoroughly investigated.

"We believe if you do a fair and honest recount, we win," Rossi said.

No matter who wins, the margin will be minuscule considering 2.8 million ballots were cast.

Rossi won the Nov. 2 election by 261 votes, then prevailed in a mandatory recount by 42 votes.

The state Democratic Party sued to force counties to reinspect disqualified votes the same day they commissioned a statewide hand recount. They hoped to bolster Gregoire's chances by adding hundreds, perhaps thousands, of new votes from King County, a Gregoire stronghold.

Losing in court is yet another blow for Gregoire and the Democrats. Rossi's lead has been expanding as the results from the manual recount trickle in. With all but seven counties reporting last night, his lead had increased to 106 votes.

Gregoire stands to whittle down Rossi's lead by approximately 80 votes if the new King County votes follow the countywide trend.

In rejecting the Democrats' lawsuit yesterday, the high court ruled that under Washington law, "ballots are to be 'retabulated' only if they have been previously counted or tallied."

Vance praised the Supreme Court's ruling but said the 573 mistakenly disqualified votes in King County should not be re-evaluated in light of the court decision.

"A recount is counting the votes again. That's all a recount is," Vance said.

Vance's interpretation relied on how the court defined a recount but ignored that the justices qualified that part of the ruling. State law also includes a provision that allows counties to fix errors, the justices wrote.

Vance was undeterred. "We are trying to apply the facts in King County to the decision that was rendered by the Supreme Court," he said.

King County Elections Director Dean Logan announced the mistake that led to the discovery of the 573 new ballots Monday.

Logan said the county canvassing board would decide today whether the ballots would be counted. He said it was likely that they would. "We take full responsibility," Logan said. "We need to correct the error."

State Elections Director Nick Handy said current law gives King County the discretion to review the 573 ballots in question.

"Matters that have already been decided by county canvassing boards should stand," Handy said.

But counties can review disqualified ballots in cases such as this one that involve an obvious

inconsistency or irregularity.

"This would be the classic example of an irregularity," Handy said. "People were registered to vote and there was an administrative error. The county can go back and correct that."

Republican Secretary of State Sam Reed also did not agree with Vance's assertion about the votes in King County.

"Part of the argument that we made before the Supreme Court to get the decision was that it is not necessary to go back and totally canvass to solve problems because the 'safety valve' is there for the county canvassing board to correct mistakes made by the counties," Reed said. "A county canvassing board can go back and correct mistakes that have been made by the county, for pretty obvious reasons."

King County Councilman Larry Phillips brought the problem in King County to Logan's attention Sunday, when he discovered his ballot had been ruled invalid.

Apparently election workers found no match when they checked signatures of Phillips and hundreds of other King County voters against an electronic database. But instead of setting the ballots aside to be checked against the actual paper registration forms, as they should have been, the ballots were simply filed as invalid.

"Ain't it great," Phillips said. "I'm fighting to get my vote counted."

Phillips said despite the mistake, Logan has administered the recounts well.

"I do not have any bone to pick with Dean," Phillips said. "Am I madder than hell that my vote didn't count? Yes, but I'm not going to throw the whole system out."

Reed was pleased with the Supreme Court's decision not to reinspect the 3,000 previously rejected ballots across the state.

"We are going to continue to be able to expedite this hand recount and get it over with, possibly by next week," he said.

"If the court had ruled for the Democratic Party, it would have established a terrible precedent. Because in the future, the candidates behind would request re-examination over and over again of any ballots that were rejected."

Randy Bowden, 49 of Kirkland, was on the list of roughly 1,500 absentee voters disqualified in King County because signatures didn't match voter registration cards. His wife said he was upset over the prospect that his vote might not count.

"He wants Rossi to win," Terri Bowden said.

Kirstin Brost, spokeswoman for the Washington state Democratic Party, said the high court's decision was disappointing.

"The court is not ... going to stop the counties from taking action," Brost said. "So the next step for us is to go work one-on-one with the county auditors and make sure every valid vote is counted."

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