

Exhibit G

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1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE 206.359.8000
FAX 206.359.9000
www.perkinscoie.com

November 28, 2004

VIA FACSIMILE AND EMAIL TRANSMISSION

The Hon. Sam S. Reed
Secretary of State
State of Washington
Office of the Secretary of State
Legislative Building
P.O. Box 40220
Olympia, WA 98504-0220

Mr. Nick Handy
Director of Elections
Office of the Secretary of State
State of Washington
Office of the Secretary of State
Legislative Building
P.O. Box 40220
Olympia, WA 98504-0220

Re: Gubernatorial Election

Dear Secretary Reed and Mr. Handy:

I wrote to you on November 24 asking that you investigate and correct a number of errors relating to the recent gubernatorial election, including among other errors, Franklin County's canvass report showing 84 more votes than voters. Mr. Handy responded that your office will not investigate or correct these errors because you do not believe you have the power to do so. In addition, he stated that you intend to "certify" the results of this election on Tuesday, November 30.

With all due respect, we believe your office not only has the power, but the duty to ensure that the results are free of obvious mathematical errors, and other irregularities.

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Certainly before *any* results can be declared official, your office must receive all of the information from the county canvassing boards that those boards are required to provide – and your office is required to review. Certification on incomplete and facially flawed information from the counties, particularly in a race this close and this important is likely to create permanent doubt about the validity of the results and whether you office took appropriate steps to investigate. For the reasons stated below, I urge you to reconsider your view that results that are erroneous on their face should be declared official without investigation and correction.

As important, if you do not intend to take any action on the serious questions raised, we request that you allow the respective counties the time to do so themselves. We do not believe that the Secretary of State certifies the results of the election of a Constitutional Officer. The 30 day deadline for certifying elections applies to elections which are not canvassed by the Speaker of the House of Representatives and it is the Speaker, not the Secretary of State, who declares the result. Whatever the role of the Secretary of State in connection with the aggregation of the returns in the Governor's race, it is not a role that must be completed by an arbitrary deadline at the expense of accuracy and consistency. The best way to promote public confidence is to make sure that correctable errors in this vote are corrected before the recount even begins.

The Secretary of State Must Verify the Recount Returns. I appreciate the independent and important role of each county election official and the county canvassing boards. However, the Secretary does have an obligation in connection with the results of recounts. The law governing amending results after a recount (RCW 29A.64.061) specifies that after a recount the Secretary of State "shall *canvass* the amended abstracts . . . and file an amended abstract." (Emphasis added). "Canvass" is defined in RCW 29A.04.013 as "the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a . . . general election and includes the tabulation of any votes that were not tabulated at the precinct or in a counting center . . ." Indeed, your own regulations define "canvass" as "the process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the official results . . . and to safeguard the integrity of the election process." WAC 434-262-010(1). That canvassing duty requires your office to look into the facially inconsistent returns provided by some counties and to examine groups of ballots that were subjected to inconsistent standards. *See* RCW 29A.60.210 ("apparent discrepancy or . . . inconsistency"). Your own rules as to canvassing at the county level, for example,

require investigation and correction. WAC 434-262-040 to -070. We understand you may interpret WAC 434-262-100 as limiting the ability to canvass votes. But this would directly conflict with the statute. Surely, the duty to "canvass" cannot be interpreted as merely ministerial or a rubber-stamp when applied to the last check on the accuracy of results. Why else would the law require you to receive not only the official abstract, but the adding machine tape?

Moreover, WAC 434-262-040 requires the county canvassing boards to verify that "all of the individual precinct and absentee ballot totals have been included in the abstract and that the subtotals and county wide totals for registered voters and votes cast are an accurate reflection of the sum of those individual precinct and absentee ballot totals." Unfortunately, many of the counties have not provided complete information to your office, including over- and under-vote totals necessary in order to validate the number of "votes cast" in this election. In one county that did provide such information – Franklin County – we were able to identify an obvious error.

Under *Bush v. Gore*, a county-based election system requires either or both of (a) clear standards applied consistent by counties on every decision point or (b) central review by a statewide office to correct errors and resolve inconsistencies. Despite your office's great efforts, this election has identified a dozen or more opportunities for inconsistency where the statutes and regulations provide no clear answer and the counties have adopted different approaches. If the State has not provided for consistency, your office must undertake central review to correct errors and resolve inconsistency.

If You Intend to Defer To The Counties, Then They Should Be Given The Time To Investigate And Correct Errors. After receiving Mr. Handy's letter, I immediately transmitted a letter to Franklin County, pointing out the errors and asking that the county investigate and file an amended canvass report with your office. (I provided you with a copy of this letter at the same time I sent it to Franklin County). Based on our concerns, the Franklin County auditor is reconvening the canvass board, and may amend the certification. While this may not result in the change of any votes, having the vote totals be accurate is essential to public trust. Franklin County's efforts only underscore the importance of having things right on this count, before we begin another. Similar problems in other counties also could lead to recanvassing at the local effort. However because of the holidays, we have not been able to gather information from each county to ensure accurate vote totals and procedures. If you continue to insist that we address concerns to local officials, you should give us time to do so and give them adequate time to correct any errors.

In addition to the issues raised in my previous letter, there appears that inconsistent standards may have been applied to signature issues on provisional or absentee voters. For example, we understand from Adams County that none of the provisional ballot signatures were matched to voter registration records, despite the requirements of WAC 434-253-047. The matching requirement was made more explicit than it had been in the past in the rules revisions issued by your offices on August 24. We believe that almost all other counties did signature matching, although no single objective standard was employed and one needs to be adopted as part of the hand recount. But even before the recount, your office should explore this issue with Adams County and, if in fact they did not follow the revised rule, they should be allowed to do so and to correct the resulting vote totals.

There is No Statutory Deadline That Requires These Issues To Be Ignored. Mr. Handy's response states that the "Secretary of State is under a statutory deadline to certify this election within 30 days." I believe that this statement is incorrect. The letter does not cite to a specific statute, but I assume you are referring either to RCW 29A.60.250, which reads:

RCW 29A.60.250
Secretary of state -- Final returns -- Scope.

As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall make a canvass of such of the returns *as are not required to be canvassed by the legislature* and make out a statement thereof, file it in his or her office, and transmit a certified copy to the governor.

(emphasis supplied) I wanted to draw your attention to two things about this statute.

First, pursuant to Article 3, Section 4, of the Constitution, gubernatorial elections are "required to be canvassed by the legislature," and therefore by its explicit terms RCW 29A.60.250 does not apply here. This election is not subject to the 30 day deadline, much less to any requirement that you act on November 30 (the 28th day). As defined by the Constitution, the Secretary's role is to deliver the county returns "to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses." The next sentence in the Constitution states that it is the legislature, not the Secretary, who certifies the election for this office: "The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by the presiding officers of both houses."

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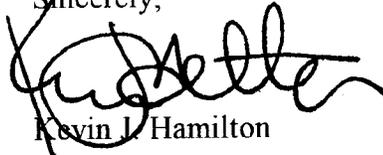
Second, even if RCW 29A.60.250 did apply, similar to the law regarding recounts cited above, it would require you in advance of certification to "canvass" the county returns.

Again, the best way to assure that the upcoming recount is fair and conclusive is to make sure that correctable errors are corrected before the recount even begins. Because the existing apparent differential is so small, correction of these errors could easily make a difference even as to which side is required to post the recount deposit. Because you do not in fact have to take any official action—even under Mr. Handy's interpretation-- on Tuesday, or even by Thursday, we do not understand why you would not take the time to ensure that (a) the counties provide to your office (and to the public) all of the information they are required to provide, and (b) either correct any errors yourself, or give the counties the time to do so. At a minimum, even if you do not intend to take action before accepting the machine recount results, I would appreciate clarification as to whether you intend to ensure that these and similar issues are addressed in the impending hand recount.

Given the short time involved, I would appreciate an immediate response.

Thank you again for your tireless work and professionalism throughout this process. I look forward to resolving these concerns, to ensuring that every vote is counted, and to removing any questions concerning the conduct of this extraordinary election and the canvassing of the election returns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Hamilton". The signature is stylized and somewhat cursive, with a large initial "K" and "H".

Kevin J. Hamilton