

The Honorable Stephanie Arend
Monday, December 20, 2004
9:00 a.m.

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

WASHINGTON STATE REPUBLICAN
PARTY, et al.,

Plaintiffs,

v.

KING COUNTY, et al.,

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE, et al.,

Intervenors

No. 04-2-14599-1

**AMENDED TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

**[CLERK'S ACTION
REQUIRED]**

The Court has reviewed the pleadings and declarations filed in support of Plaintiffs' motion for a temporary restraining order and Defendants' opposition to said motion. It clearly appears to the Court from the facts as shown by the declarations that unless the below Temporary Restraining Order is entered, Plaintiffs will suffer immediate harm and denial of rights that cannot be compensated in damages. There is a significant and continuing risk to Plaintiffs from the harm that may result from Defendants' failure to comply with Washington law as described in the declarations and pleadings on file. The Court is of the view that an

1 order must be issued immediately and that any delay would unduly increase the risk of harm
2 and loss.

3 Plaintiffs' counsel has certified to the Court in writing that notice to the defendant was
4 provided.

5 The Court makes the following findings of fact:

6 1. On November 17, 2004 Secretary of State Sam Reed ("Secretary of State")
7 announced the official results of the November 2, 2004 general election. Dino Rossi won
8 the Governor's race by a margin of 261 votes. Because the margin of victory was fewer
9 than 2000 votes, the Secretary of State ordered a machine recount of the votes in the race
10 for governor. RCW 29A.64.021.

11 2. The votes were retabulated, and Governor-Elect Rossi again prevailed. The
12 Secretary of State certified the results and confirmed on November 30, 2004 that Rossi was
13 the Governor-Elect. RCW 29A.60.250.

14 3. On December 3, 2004, the Washington State Democratic Central
15 Committee ("WSDCC") requested a state-wide manual recount. RCW 29A.04.139.

16 4. On December 3, 2004, the WSDCC filed a Petition in the Washington State
17 Supreme Court seeking an emergency relief and an order directing the Secretary of State to
18 promulgate "uniform standards" for the manual recount. The WSDCC sought an order
19 from the Supreme Court requiring that the canvassing boards of all 39 counties in the State
20 of Washington recanvass all ballots previously canvassed and rejected.

21 5. On December 14, 2004, the Supreme Court denied the relief holding that
22 the word "recount" means the process of retabulating ballots and producing amended
23 election returns under RCW 29A.04.139. No. 76321-6. The Supreme Court further held
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1 that under Washington law, ballots are to be “retabulated” **only if they have been**
2 **previously counted or tallied.** The Supreme Court rejected the position of the WSDCC
3 that reconvassing of rejected ballots was required under any applicable Washington state
4 statute.

5
6 6. On or about December 13, 2004, King County Records, Elections and
7 Licensing Division (“King County Elections Division) disclosed that there were at least an
8 additional 520 ballots which had previously been canvassed and rejected and which should
9 now be counted.

10 7. On December 15, 2004, at the King County Canvassing Board meeting,
11 Dean Logan, Director of King County Elections Division, stated that instead of 520
12 ballots, there were 573 absentee ballots that had previously been canvassed and rejected
13 prior to November 17, 2004 because King County Elections Division could not match the
14 signatures on the absentee ballots with any digital voter registration signatures.

15 8. Although the Washington State Supreme Court on December 14, 2004 had
16 stated that no reconvassing should occur in the hand recount, the three members King
17 County Canvassing Board on December 15, 2004 voted (2 to 1) to reconvass the
18 previously rejected 573 absentee ballots.

19 9. Based on the foregoing, and the materials filed in support of and in
20 opposition to the motion, the Court concludes that RCW 29A.60.210 does not apply in this
21 context.

22 **For these reasons,**

23 IT IS HEREBY ORDERED that a temporary restraining order is issued against the
24 King County Elections Division and the King County Canvassing Board to segregate the
25 573 previously rejected absentee ballots;

26 ORDERED that Defendants must retain the absentee envelope with each absentee
27 ballot;

1 ORDERED that Defendants are restrained from canvassing the ____ previously
2 rejected and canvassed ballots; and

3 ORDERED that this order is immediately binding upon the parties to this action,
4 their agents, servants, employees and attorneys, and upon those in active participation with
5 them who receive notice of the order by personal service or otherwise; and

6 ORDERED that Bond shall be posted in the amount of \$ _____ as security for
7 the payment of such costs and damages Defendant King County Elections Division and the
8 King County Canvassing Board may incur or suffer if they are found to have been
9 wrongfully enjoined or restrained by the issuance of this order; and

10 ORDERED that this order shall remain in full force and effect for
11 fourteen (14) days after entry, unless within that time, for good cause shown, it is extended
12 or unless it is superseded by a preliminary or permanent injunction; and

13 ORDERED that a preliminary hearing shall be held on _____, at
14 which time Defendants shall show cause why this order should not be converted to a
15 preliminary or permanent injunction.

1 ORDERED that parties will be entitled to conduct depositions in advance of the
2 hearing, on 48 hours notice, provided the parties attempt to coordinate mutually agreeable
3 dates and times.

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5 Issued at ___ p.m., this ____ day of December, 2004, at Tacoma, Washington.

6
7 _____
8 Judge Stephanie A. Arend

9 Presented by:

10 DAVIS WRIGHT TREMAINE
11 Attorneys for Plaintiffs

12 By 
13 Harry Korrell, WSBA No. 23173
14 Robert J. Maguire, WSBA No. 29909

15 Diane E. Tebelius, Attorney at Law
16 Attorneys for Plaintiffs

17 By 
18 Diane E. Tebelius, WSBA No. 19727