

No. 76321-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DAVID T. McDONALD, et al.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, et al.,

Respondents

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**DECLARATION OF JEFFERY A. RICHARD**

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Thomas F. Ahearne, WSBA No. 14844  
Jeffery A. Richard, WSBA No. 28219  
Hugh D. Spitzer, WSBA No. 5827  
Marco J. Magnano, WSBA No. 1293  
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Attorneys for Respondent Secretary of State Sam Reed

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*\*Due to the fact that the current Attorney General is one of the candidates in the election being recounted, the above private counsel (instead of the Attorney General's office) is representing the Secretary of State in this matter.*

JEFFERY A. RICHARD declares:

1. Capacity. I am one of the attorneys representing the Respondent Secretary of State in this suit. As such, I have personal knowledge of and am competent to testify to the facts stated below.

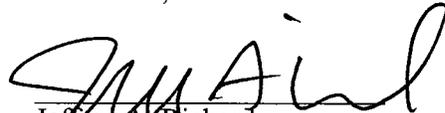
2. Exhibits and Attachments. Attached are true and correct copies of the following exhibits:

Exhibit A: a true and correct copy of the Declaration Of Nick Handy and Attachments 1-4.

Exhibit B: a true and correct copy of the Declaration Of John Pearson and Attachments 5-8.

Exhibit C: a true and correct copy of the Declaration Of Paul Miller.

3. Closing . I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Executed as Seattle Washington this 7<sup>th</sup> day of December, 2004.

  
Jeffery A. Richard

No. 76321-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DAVID T. McDONALD, et al.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, et al.,

Respondents

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**DECLARATION OF NICK HANDY**

---

Thomas F. Ahearn, WSBA No. 14844  
Jeffery A. Richard, WSBA No. 28219  
Hugh D. Spitzer, WSBA No. 5827  
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Attorneys for Respondent Secretary of State Sam Reed

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*\*Due to the fact that the current Attorney General is one of the candidates in the election being recounted, the above private counsel (instead of the Attorney General's office) is representing the Secretary of State in this matter.*

NICK HANDY declares:

1. Capacity. I am the Director of Elections in the Office of the Washington Secretary of State. In this capacity, I oversee the Elections Division of the Secretary of State's office. The Elections Division administers the state elections program under the direction of the Secretary of State consistent with applicable law. I am an attorney and have 30 years experience working in state and local government, including 14 years in the state Attorney General's Office. The Elections Division issues regulations of statewide application for elections in Washington state, including the regulations governing the original count and recount in elections such as the Governor's election at issue in this suit. As such, I have personal knowledge of and am competent to testify about the matters stated in this declaration.

2. Washington's Statewide Rules Governing. Before this year's November 2004 election, the Washington Secretary of State issued regulations to govern the counting of ballots and other matters relating to elections in our State. For the Court's convenience, a copy of the August 24, 2004 emergency amendments to WAC 434-253 is attached as Attachment 1.

3. The "Governor Recount 2004" Guidelines Do Not Change Any Of The Previously Established Statewide Standards Governing The November 2, 2004 Election. The petitioners motion suggests that the Secretary of State's machine recount guidelines and manual recount guidelines were rules or regulations adopted or promulgate by the

Secretary of State. That, however, is not accurate. As the Secretary of State's News Release accompanying the machine recount guidelines and the text of the manual recount guidelines both expressly explain, those guidelines' advice regarding the handling of this year's recount did not in any way change Washington's previously-established rules, standards, and procedures governing the process for the recounting of votes in Washington state. <http://www.secstate.wa.gov/office/20041119.htm>. For the Court's convenience, a printed copy of those two guidelines are attached as Attachments 2 & 3 to this Declaration.

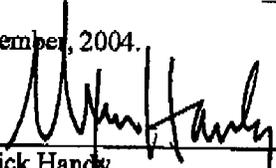
4. Schedule for the manual recount. Our office has periodically published schedules for the conduct of the original count, the machine recount, and the pending manual recount. Under our prior direction, we advised the political parties, candidates, and the County Auditors that we would issue a directive ordering a statewide manual recount on Monday, December 6, 2004, assuming that a supporting request was filed in our office by the December 3, 2004 deadline.

Consistent with that schedule, the Secretary of State issued an order for a statewide mandatory recount on Monday, December 6, 2004 to the County Auditors and to the political parties and candidates. A true and correct copy of that order is attached as Attachment 4 to this Declaration.

The Order for Manual Recount was issued to the County Auditors on December 6 with a request that the County Auditors not begin counting ballots until Thursday, December 9, 2004 or such other time as the Supreme Court may advise. The counties are by statute required to begin

the recounting process within three days of that order. The reason for our request to delay the counting until Thursday was to allow the Washington Supreme Court an opportunity to hear the pending case on Wednesday and hopefully issue an expedited order. We have advised the County Auditors that the counties may on Wednesday undertake preliminary matters relating to room arrangements, training workers, and sorting ballots, but have requested that counting not begin until Thursday to allow the court an opportunity to hear and rule upon this case. Some counties have responded that they are going to commence the recount on Wednesday, and others have responded that they will commence on Thursday.

5. Closing. I declare under penalty of perjury that the foregoing is true and correct. Executed at Olympia, Washington, this 7<sup>th</sup> day of December, 2004.

  
\_\_\_\_\_  
Nick Handy,  
Washington Director of Elections,  
Office of the Washington Secretary  
of State.

WSR 04-18-028  
EMERGENCY RULES  
SECRETARY OF STATE

[ Filed August 24, 2004, 2:33 p.m. , effective August 24, 2004 ]

Purpose: Implement the Help America Vote Act; provide consistency in ballot reconciliation.

Citation of Existing Rules Affected by this Order: Amending WAC 434-253-043, 434-253-045, 434-253-047, and 434-253-049.

Statutory Authority for Adoption: RCW 29A.04.611.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The primary election is scheduled for September 14, 2004. There is not time to adopt permanent rules in time for counties to prepare for the primary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 24, 2004.

Sam Reed

Secretary of State

AMENDATORY SECTION(Amending WSR 02-07-029, filed 3/12/02)

WAC 434-253-043 (~~Special~~) Provisional ballots--When issued. A (~~special~~) provisional ballot is a regular ballot issued to a person

EXHIBIT 1

seeking to vote ((in a polling place)) under the following circumstances:

- (1) The name of the voter does not appear in the poll book;
- (2) The voter's name is in the poll book but there is an indication that the voter was issued an absentee ballot, and the voter wishes to vote at the polls; or
- (3) The voter fails to produce identification when required;
- (4) Other circumstances as determined by the precinct election official.

In the polling place after ((After)) the voter signs the poll book, the precinct election officer shall issue ((a special ballot outer envelope and a security envelope)) a ballot to the voter eligible for a ((special)) provisional ballot. The voter shall vote the ballot in secrecy and when done, place the ballot in ((the)) a security envelope, then place the security envelope with the ballot in it in ((the special)) a provisional ballot outer envelope and return it to the precinct election official. The precinct election official shall ensure that the required information is completed on the outer envelope and have the voter sign it in the appropriate space, and place it in a secure container. (See also WAC 434-240-250 for voters issued an absentee ballot.)

In the case of absentee ballots where the voter was required to produce ID; the ballot shall be considered provisional and processed in the same manner as pollsite provisional ballots.

[Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-043, filed 3/12/02, effective 4/12/02.]

AMENDATORY SECTION (Amending WSR 02-07-029, filed 3/12/02)

**WAC 434-253-045 ((Special)) Provisional ballots--Required information.**

At a minimum, the following information will be required to be printed on the outer ((special)) provisional ballot envelope:

- (1) Name and signature of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the ((special)) provisional ballot.
- (5) Precinct and polling place at which voter has voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.

Each provisional ballot voter shall be required to sign an oath as required by the Help America Vote Act of 2002, Section 302. The oath may be located on the provisional ballot envelope or on the poll book.

No ~~((special))~~ provisional ballot shall be rejected for lack of the information described in this section as long as the voter provides a valid signature and sufficient information to determine eligibility.

~~((County auditors shall be permitted to use any existing stock of special ballot envelopes in the form specified by state law or administrative rule prior to January 1, 2002. Upon exhaustion of that stock or not later than December 31, 2002, county auditors shall comply with the provision of this regulation when ordering special ballot envelopes.))~~

[Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-045, filed 3/12/02, effective 4/12/02.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION(Amending WSR 02-07-029, filed 3/12/02)

**WAC 434-253-047 ((Special)) Provisional ballots--Disposition.** ~~((+))~~  
Upon receipt of the ~~((special))~~ provisional ballot, including ~~((special))~~ provisional ballots from other counties or states, the auditor must investigate the circumstances surrounding the ~~((special))~~ provisional ballot prior to certification of the primary or election. ~~((A special provisional ballot cannot be counted if the registered voter did not sign either the poll book or the special ballot envelope.))~~ A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record.

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

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

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

~~((c))~~ (3) If the auditor determines that the cancellation was not in error, the voter shall be afforded the opportunity to reregister ~~((at the voter's correct address))~~, and the ~~((special))~~ provisional ballot will not be counted.

~~((2))~~ (4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received at his or her designated polling place, the auditor must ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted.

~~((3))~~ (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 (~~special~~) 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.

(~~(4)~~) (6) If the auditor finds that an absentee voter who voted a (~~special~~) provisional ballot at the polls has also voted an absentee ballot in that primary or election, the (~~special~~) provisional ballot will not be counted.

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

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

(~~(5)~~) The auditor will prepare a tally displaying the number of (~~special~~) provisional ballots received, the number found valid and counted, the number rejected and not counted, and the reason for not counting the ballots, as part of the canvassing process and presented to the canvassing board prior to the certification of the primary or election.

[Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-047, filed 3/12/02, effective 4/12/02.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 434-253-048 Provisional ballots -- Free access system.** Each county shall establish a free access system, as described by the Help America Vote Act, 42 USC sec. 15482 (a)(5), for provisional ballot voters. The system shall include the following:

(1) The voter may determine if their provisional ballot counted and, if not, why not, without cost to the voter. Examples of a free access system include a toll free telephone number, a website, or a letter sent to every provisional ballot voter.

(2) At the time of voting, provisional voters are given written information that state how information on their ballot will be made available to them. In the case of absentee provisional ballots, notification may be sent to the voter promptly after the county auditor determines that the ballot will be treated as a provisional ballot.

(3) The system shall employ measures to ensure the system is restricted to the individual who cast the ballot and the voter's personal information is secure and confidential.

(4) For provisional ballots sent to other counties, information as to where the ballot was sent and how to find out if their ballot was counted in the voter's home county shall be available without cost to the voter.

(5) For ballots received from another county, a provisional ballot voter shall be able to determine if their ballot was counted and, if not, why not, shall be available without cost to the voter. If needed, the county may send instructions to the voter on how to access the information.

(6) Provisional ballot information shall be available on a county's free access system within one week following the certification of a primary or election.

[1]

AMENDATORY SECTION(Amending WSR 02-07-029, filed 3/12/02)

**WAC 434-253-049 ((Special)) Provisional ballots--Processing.** When the disposition of the ballot determines that the ballot is to be counted, the ballot shall be processed in a manner similar to an absentee ballot as provided in chapter 434-240 WAC except the outer ((~~special~~)) provisional ballot envelopes must be retained separately from the absentee ballot return envelopes. The manual inspection of the ballots as required in WAC 434-261-070 must also be carried out.

[Statutory Authority: RCW 29.04.210, 29.36.150. 02-07-029, § 434-253-049, filed 3/12/02, effective 4/12/02.]

NEW SECTION

**WAC 434-253-203 Poll site ballot reconciliation -- Central count optical scan and punchcard.** Using the poll site ballot accountability forms, the poll books, and election night precinct results, poll site ballots shall be reconciled in the following manner:

(1) Reconciliation must begin as soon as practical after the election.

(2) Each precinct's results shall be reconciled with the precinct's ballot accountability form. The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be enhanced or duplicated, ballots with write-in votes, spoiled ballots.

(3) Any discrepancies must be investigated. At a minimum, the following areas must be checked until the discrepancy is resolved:

(a) Check the accuracy of the ballot accountability form.

(b) Recount the signatures in the poll book.

(c) Check the spoiled ballots.

(d) Check the provisional ballots.

(e) Count the ballot stubs.

(f) Check the bins in the ballot counter.

(g) Check the poll site supplies for ballots.

(h) Manually count the number of ballots.

(i) Call the poll workers.

(4) All steps to reconcile each precinct shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election can be certified.

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**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 434-253-204 Precinct or poll site ballot reconciliation -- Precinct count optical scan and direct recording devices.** Poll site ballots shall be reconciled in the following manner:

(1) Each precinct or poll site ballot counter shall print out results immediately following the closing of the polls. A copy of the results will be posted at the poll site or otherwise made available for public inspection.

(2) The total of votes cast from each counter shall be reconciled with the number of signatures in the poll book(s) prior to transporting to the counting center. The total number of ballots reported on the results printout should equal the number of signatures in the poll book(s). Discrepancies shall be reported and explained by the Inspector.

(3) In a sealed container, the data pack/chip of each ballot counter shall be transported to the counting center with each results printout.

(4) The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be enhanced or duplicated, ballots with write-in votes, any out-sorted ballots, spoiled ballots.

(5) Any discrepancies must be investigated. At a minimum, the following areas must be checked until the discrepancy is resolved:

(a) Check the accuracy of the ballot accountability form.

(b) Recount the signatures in the poll book.

(c) Ballot counter/direct recording device results.

(d) Check the spoiled ballots.

(e) Check the provisional ballots.

(f) Count the ballot stubs.

(g) Check the poll site supplies for ballots.

(h) Manually count the number of ballots.

(i) Call the poll workers.

(6) All steps to reconcile each precinct shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election may be certified.

(1)

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## GOVERNOR RECOUNT 2004

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### News Release

Issued: November 19, 2004

In anticipation of the upcoming recount, a conference call was made with the Office of the Secretary of State and County Auditors to discuss the guidelines to be used for the mandatory machine recount in the Governor's race.

The following guidelines are a result of that discussion.

These guidelines are not new law or a change in the current law. They are a recitation of current law focusing on the process and procedures of a mandatory machine recount.

## GOVERNOR RECOUNT 2004

The Secretary of State has ordered a machine recount for the race of Governor.

Chapter 29A.64 is the chapter on Recounts. There are no WACs addressing recounts specifically.

### Ballot Programming

Ballot programming must be changed to allow only the Governor's race and any other races that are being recounted to appear on the printed reports. RCW 29A.64.011 (fifth paragraph). Depending upon your ballot counting system, you may need new programming or you may be able to change your report format.

An L&A Test should be performed before recounting any ballots. RCW 29A.64.011 (fifth paragraph).

If you prepare ballots or conduct your L&A test before the official time and date of the recount, you should notify the candidates of the time and date those activities will be performed. RCW 29A.64.030; RCW 29A.64.041.

For those of you using provisionally certified software, it is certified through the General Election and that includes the recount.

### Observers

Notice of the recount must be made to all candidates by mail, phone, fax, and email. RCW 29A.64.030.

Each candidate is allowed to have at least two observers present during the recount. The county can limit the number of additional observers over the two allowed for each candidate if, in his or her judgment additional observers would cause undue delay or disruption of the recount process. RCW 29A.64.041(3). Legal counsel may accompany the observers. RCW 29A.64.030.

Observers may not handle the ballots or make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots. RCW 29A.64.041(3).

Observers are allowed to witness all phases of the ballot tabulation process but may not handle any ballot. RCW 29A.64.041(1)

Providing written instructions and rules for observers is strongly encouraged.

### Canvassing Board

EXHIBIT [2]

The canvassing board does not need to be present during the entire recount if they have delegated that responsibility to the County Auditor in writing. RCW 29A.60.140.

The canvassing board must meet to certify the results of the recount. RCW 29A.64.061.

Canvassing board meeting notices can be posted as an emergency meeting, requiring only 24 hours notification of the media. RCW 42.30.080.

#### Counting the Ballots

Ballot counters should be cleaned and prepared for counting.

The area for counting should be set up to ensure that only previously counted ballots are recounted.

Before the recounting of ballots begins, a zero report shall be printed.

All valid write-in votes for Governor must be individually tallied. Optical scan counties may need to out-stack overvotes, undervotes, and write-ins to find all the valid write-ins to tally. RCW 29A.60.021(3).

In optical scan counties, if the ballot counter cannot out stack undervotes for the office of Governor, then a manual check for undervotes must be performed.

Any write-in votes for Christine Gregoire, Dino Rossi, or Ruth Bennett must be added to your final results for those candidates. Please remember how the following situations are counted:

- A write-in vote is valid if the voter included the candidate's name, office, and party. For optical scan counties, the voter indicates the office by writing in the name in the spot for write-ins under listing of Governor candidates. RCW 29A.60.021
- As Christine Gregoire, Dino Rossi, and Ruth Bennett were declared candidates, exact spelling of the candidate's name and including the office and party would not be required for the write-in to be valid. RCW 29A.60.021
- In an optical scan county, the oval or arrow does not need to be marked for the write-in to be valid.
- If a voter marks a candidate for a race and writes-in the same candidate, it is not an overvote. It is a valid vote for that candidate. WAC 434-261-075

Write-ins may be tallied before, during, or after the machine count of all other ballots.

Ballots where the canvassing board has already made a decision are counted exactly as the canvassing board directed.

Questions on ballots not previously determined by the canvassing board may be reconsidered by the canvassing board or by those so delegated. Ballots may be enhanced or duplicated to allow the intended vote to count. WAC 434-261-080; WAC 434-261-085; WAC 434-261-090.

If a recount takes more than one day to complete, the county shall print a report at the end of each day. At the beginning of the next day, before any ballots are counted, another report shall be printed. If the report matches the report printed the previous night, the recount may continue. If they do not match, then any discrepancy shall be resolved prior to continuing the recount.

Do not enter any interim results into the Secretary of State website—only final results.

#### Certifying the Results

The canvassing board must meet to certify the results. RCW 29A.64.061.

Once the ballot counting is finished, be sure to enter the results on the Secretary of State's website. Only votes for Christine Gregoire, Dino Rossi, and Ruth Bennett (including any that the voter wrote in) are placed on the website. Vote tallies for other write-in candidates are submitted with your hard copy report.

Send by overnight mail (FedEx or other) the hard copy results to the Office of the Secretary of State, 1007 Washington St. SE, Olympia WA 98501, immediately after your canvassing board certifies the results.

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Washington Secretary of State  
520 Union Avenue SE, PO BOX 40220, OLYMPIA WA 98504-0220  
(360) 902-4151

## **Procedural Guidelines for Manual Recount Governor Race**

The Secretary of State is providing the following procedural guidelines to assist County Auditors in the upcoming manual recount. These procedural guidelines are not new law or a change in the current law governing the November 2004 election. They do not in any way change the statewide substantive standards with respect to determining the validity of or vote on a ballot. Instead, these procedural guidelines are a recitation of current law focusing on the process and procedures of a manual recount.

Title 29A of the Revised Code of Washington sets forth the election laws of this state, and Chapter 29A.64 is the section that deals specifically with recounts. No rules have been promulgated in the Washington Administrative Code addressing recounts specifically. Counties should, however, review WAC 434-261-070 through WAC 434-261-090 regarding inspection of ballots and other issues which may be pertinent to a manual recount. The provisions contained in these rules should, where appropriate, be applied throughout the manual recount process in the same manner as applied in the original count and the mandatory machine recount.

### **Canvass Results**

Final results for the manual recount should be reported in the same manner as the machine recount of ballots. If the machine recount was reported by precinct, with poll site and absentee totals separate, the manual recount results should be in the same format.

Overvotes and undervotes need not to be reported on the amended abstract submitted to the Secretary of State. Overvotes and undervotes should be available in each county, however, for any party review and for purposes of ballot reconciliation.

### **Preparation for the Recount**

Opening sealed boxes and preparing ballots is part of the recount. The two day notification of candidates and observers applies to this part of the recount. RCW 29A.64.041 Thus, counties should not begin opening sealed boxes or preparing ballots until the required 2-day notice has been provided to the candidates and the recount process begins.

### **Recount Procedures**

We are not aware of any statutory authority that prevents each county from determining the order in which the ballots will be recounted.

Counties should use recount procedures adopted by their canvassing board if such procedures have been adopted. No local procedure should be adopted that conflicts with state law or the Washington Administrative Code.

**EXHIBIT 13**

Such procedures should include provisions regarding:

- recount location;
- counting team procedures;
- totaling precinct results;
- discrepancies between manual and machine recount results;
- numbers of observers;
- observer guidelines;
- removal of observers and authorizing circumstances;
- procedures for the physical handling of ballots needing further consideration;
- procedures for ballots sorted in wrong precincts; and
- security measures.

### **Ballots**

All ballots cast for the office of Governor must be included in the recount. RCW 29A.64.011

Counties are reminded that RCW 29A.60.210 provides that whenever the canvassing board finds that there is an apparent discrepancy or an inconsistency in the returns of an election, the board may recanvass the ballots or voting devices in any precincts of the county, and that the canvassing board shall conduct any necessary recanvass activity on or before the last day to certify the election and correct any error and document the correction of any error that it finds.

Ballots needing enhancement, duplication, or canvassing board determination should be handled in the same manner as during the machine recount. WAC 434-261-080; WAC 434-261-085; WAC 434-261-090.

Snohomish and Yakima Counties will be required to print out poll site ballots to recount, unless exempted by the recount request. (That is because they are the only two electronic poll site system counties in Washington.)

Skamania and Yakima Counties will need to recount the original absentee and vote-by-mail ballots. (That is because they are the only Hart ballot system counties in Washington.)

Any write-in votes for Christine Gregoire, Dino Rossi, or Ruth Bennett must be added to final results for those candidates. As a reminder, the following situations are counted under the existing statewide standards:

- A write-in vote is valid if the voter included the candidate's name, office, and party. For optical scan counties, the voter indicates the office by writing in the name in the spot for write-ins under the office heading. RCW 29A.60.021.

- As Christine Gregoire, Dino Rossi, and Ruth Bennett were declared candidates, exact spelling of the candidate's name and including the office and party would not be required for the write-in to be valid. RCW 29A.60.021
- In an optical scan county, the oval or arrow does not need to be marked for the write-in to be valid.
- If a voter marks a candidate for a race and writes in the same candidate, it is not an overvote. It is a valid vote for that candidate. WAC 434-261-075

### **Security**

Secretary of State recommendations are as follows:

- all precincts should be counted to conclusion;
- a record of each precinct should be kept as it is recounted;
- tally results should be secured from day to day by:
  - securing the results in a sealed container, with one observer from each party initialing the seal log, and/or
  - having one observer from each party initial the tally sheets at the end of the day, and
  - each morning confirming with the observers that the tally sheets are the same as from the day before;
- provide security for off-site counting; and
- use full security measures before and during the recount.

### **Observers**

Notice of the recount must be made to all candidates by mail plus by telephone, fax, e-mail or other electronic means. At least three attempts must be made over a two-day period to notify the affected parties or until the affected parties have received notification. RCW 29A.64.030.

Observers shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. RCW 29A.64.041(1).

Observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots. RCW 29A.64.041(3).

Each candidate is allowed to have at least two observers present during the recount.

The county may limit the number of additional observers over the two allowed for each candidate if, in his or her opinion additional observers would cause undue delay or disruption of the recount process. RCW 29A.64.041(3). Legal counsel may accompany the observers. RCW 29A.64.030.

We are not aware of any statutory authority for observers to challenge any ballot or request that a ballot be considered or reconsidered by the canvassing board.

Secretary of State makes the following recommendations regarding observers.

- Counties should provide written instructions and rules for observers to ensure their observation activity does not disrupt the recount process.
- Counties should provide training for the official observers to ensure each observer understands and agrees to follow those written instructions and rules.
- Counties should allow as many observers as possible to observe the ballots and the process of tabulating the votes, but not fewer than two observers for each candidate.
- Counties should ensure that our State's upcoming manual recount is as open and transparent as possible, allowing observers as much access to view each ballot and each ballot's tabulation as staff and space reasonably permit. Reasonable rules and restrictions on the conduct of such observers should be able to maintain the orderly, trustworthy, and accurate recount process essential to preserving public confidence in the ultimate recount results.

### **Canvassing Board**

The Canvassing Board or their designee does not need to be present during the entire recount if they have delegated that responsibility to the County Auditor in writing. RCW 29A.60.140.

The Canvassing Board or their designee must meet to certify the final results of the manual recount. RCW 29A.64.061.

Canvassing Board meeting notices can be posted as an emergency meeting, requiring 24 hours notification of the media. RCW 42.30.080.

### **Certifying the Results**

Counties should not enter any interim results into the Secretary of State website—only final results.

The canvassing board must meet to certify the results. RCW 29A.64.061.

Once the ballot counting is finished, counties are requested to promptly enter the results on the Secretary of State's website. Only votes for Christine Gregoire, Dino Rossi, and Ruth Bennett (including any valid write-in votes for those candidates) should be entered on the website. Vote tallies for other write-in candidates are submitted with the hard copy report.

Hard copy results should be sent by overnight mail (FedEx or other) to the Office of the Secretary of State, 1007 Washington St. SE, Olympia WA 98501, immediately after the canvassing board certifies the results.

December 3, 2004  
Secretary of State  
Elections Division



Legislative Building  
PO Box 40220  
Olympia, WA 98504-0220  
Tel: 360.902.4151  
Fax 360.586.5629  
www.secstate.wa.gov

**ORDER FOR MANUAL RECOUNT  
DECEMBER 6, 2004**

I, Sam Reed, Secretary of State, do hereby certify that a request for a manual recount for the race of Governor for all ballots in all counties was filed in my office on Friday, December 3, 2004.

THEREFORE, pursuant to RCW 29A.64.011, I hereby order that a manual recount be made of all votes cast for the Office of Governor of the State of Washington and the county canvassing boards of the counties involved certify the results of said recount to the Secretary of State in the manner provided by RCW 29A.64.041.

IN WITNESS THEREOF, I have set my hand and affixed the seal of the State of Washington this 6<sup>th</sup> day of December 2004.

Secretary of State

**EXHIBIT 4**

No. 76321-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DAVID T. McDONALD, et al.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, et al.,

Respondents

---

**DECLARATION OF JOHN PEARSON**

---

Thomas F. Ahearn, WSBA No. 14844  
Jeffery A. Richard, WSBA No. 28219  
Hugh D. Spitzer, WSBA No. 5827  
Marco J. Magnano, WSBA No. 1293  
SPECIAL ASSISTANT ATTORNEYS GENERAL\*  
Foster Pepper & Shefelman PLLC  
1111 Third Avenue, suite 3400  
Seattle, WA 98101-3299  
Telephone: (206) 447-8934/447-4400  
Telefax: (206) 749-1902/447-9700  
E-mail: [ahearne@foster.com](mailto:ahearne@foster.com)

Attorneys for Respondent Secretary of State Sam Reed

*\*Due to the fact that the current Attorney General is one of the candidates in the election being recounted, the above private counsel (instead of the Attorney General's office) is representing the Secretary of State in this matter.*

JOHN PEARSON declares:

1. Capacity. I am the Deputy Director of Elections in the Office of the Washington Secretary of State. My responsibilities include supervision in the Elections Division in the Secretary of State's Office. I have served in the Elections Division for thirty years, retiring in August 2004. In September of 2004, the Division rehired me for the remainder of the year. In my time in the Elections Division, I worked for four different Secretaries of State, including Secretaries Ludlow Kramer, Bruce Chapman, Ralph Munro, and Sam Reed, and five different Directors of Election including Directors Don Whiting, Gary McIntosh, Dean Logan, David Elliott, and Nick Handy. As such, I have personal knowledge of and am competent to testify about the matters stated in this declaration, all of which is based on the best of my knowledge and recollection.
2. In my above capacity, I have served as the primary liaison between local election officials (the County Auditors) and the Office of the Secretary of State. In that capacity I have provided advice and counsel to local election officials on the administration of elections to facilitate uniformity.
3. During the past thirty years a number of recounts have taken place involving either multi-county or statewide measures or candidates. In each of these recounts the Office of the Secretary of State advised the County Auditors regarding recommended procedures and guidelines to be followed in administering the recount. True and correct copies of the guidelines issued on November 30, 1990, December 6, 1991,

November 20, 1996, and November 21, 2000 are attached as Attachments 5 – 8 to this Declaration. As those attachments confirm, in each of these communications with County Auditors, the Washington Secretary of State has advised that the recount is a re-tallying of ballots cast, and not a re-canvass of the election.

4. In 1992, the state legislature authorized a certification and training program for local election officials designed to facilitate uniformity and standardization in the administration of elections. I assisted in drafting the statutes that created the program and the administrative rules that facilitate its operation. (Washington is one of the few states that operates such a training program for local election administrators.) The purpose of the program is to train and certify local election administrators and to conduct periodic reviews of county election procedures. More than 120 local election officials have met the requirements for certification. Training is accomplished through an annual election administrators' conference and through a series of statewide and regional training workshops throughout the state. For example, in 2004 we held a two-day training seminar at the election conference, 4 regional training workshops, and two general statewide training workshops. The purpose of these workshops is to facilitate standardization and uniformity in the election process.

5. Following the ruling of the United States Supreme Court in Bush v. Gore, this office worked with local election administrators to perfect existing administrative rules and to establish a statewide standard

for what constitutes a valid vote in Washington elections. Those administrative rules may be found in Chapter 434-261 of the Washington Administrative Code. These uniform standards apply statewide.

6. The Secretary of State has adopted administrative rules consistent with state and federal law to facilitate the operation of these statutory procedures. For those election procedures not mandated by statute, we have served in an advisory capacity and recommended procedures to be followed.

7. In my 30 years of experience, I am aware of no instance when a recount was conducted where the Secretary of State proposed or implemented a change to any existing policies and practices during the course of the recount. This would apply to changing existing standards as well as introducing new standards. The longstanding practice of this office has been to maintain consistent standards throughout the administration of the election.

8. Closing. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed at Olympia, Washington, this 7<sup>th</sup> day of December, 2004.

  
\_\_\_\_\_  
John Pearson,  
Deputy Director of Elections,  
Office of the Washington Secretary  
of State.

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### COSTS OF A MANDATORY RECOUNT

Mandatory recounts of state measures are at state expense. An invoice voucher is enclosed with this bulletin. Please complete and return it as soon as possible. Costs of other recounts are borne by the jurisdictions responsible for the costs of the original election.

### TIME, PLACE AND NOTICE

The procedural requirements for setting the time, place and for notifying affected persons for a mandatory recount are, by reference, the same as those specified in RCW 29.64.020. Upon receiving notice from the secretary of state that a mandatory recount is required, the canvassing board should set a specific time, not more than four days after the receipt of the request for the recount from the secretary of state, and a place for the recount.

The county auditors in Clallam, Grays Harbor, and Jefferson counties should mail a notice of the time and place of the recount to any candidate receiving votes for the office of State Representative, 24th Legislative District, Position 1. The notice should be sent by certified mail at least two days in advance of the date of the recount. The notice should also inform the candidates that they may attend, witness, and be accompanied by legal counsel. A copy of the notice should also be mailed to the Secretary of State's Office, the press, political parties, campaign organizations and other interested groups or individuals.

With respect to the recount on SJR 8212, county auditors should notify Jean Womer or Kathleen Dare at (206) 753-2336 of the date and time set for the recount. This office will then notify the press and the legislature. County auditors should notify their local media.

### COUNTY CANVASSING BOARD

Explain Recount Process. We would recommend that each canvassing board first outline and explain for those attending the recount the sequence of events that will take place during the recount. This will help avoid questions and concerns by witnesses that might interrupt and interfere with the recount of the ballots.

EXHIBIT 5

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Adoption of Operating Rules. Prior to the start of the recount, it is advisable that each canvassing board adopt appropriate rules of conduct for persons observing the recount. This will make it clear to those present, what is expected of them and to whom to direct questions or concerns. In Appendix "A" of this bulletin, we have enclosed suggested procedures for your consideration. Certainly, these rules may be varied depending upon the type of voting system and the facilities each county uses for the recount.

Appointment of and Swearing-in of Election Board. In counties which use paper ballots or voting machines, the canvassing board should appoint and swear-in any election inspectors, judges, and clerks who may be assisting in the recount pursuant to the provisions of Chapter 29.45 RCW. These inspectors and judges should be given their oath of office during the initial meeting of the canvassing board. Suggested oaths, derived from RCW 29.45.090, 29.45.100, and 29.45.110, are attached to this bulletin as Appendix "B".

Challenge of Ballots Not Allowed. We are advised by the Attorney General that state law makes no provision for the challenge of ballots or voters (as provided in RCW 29.10.125) during a recount. The recount procedure provided for by statute is a mechanical function of re-tallying the ballots cast and accepted as valid by the precinct election officers or the canvassing board during the canvass of the election. The decision of the precinct election officers or canvassing board with respect to the inclusion or exclusion of a particular ballot during the canvass is not in question during the recount.

#### RECOUNT PROCEDURES

Uniform Requirements. The following are statutory requirements that apply to all types of voting systems during a mandatory recount:

1. RCW 29.64.030 clearly directs that the canvassing board or their duly authorized representatives shall not permit the re-checking of votes for election to any office or position, or upon any question or proposition, other than those specified in the mandatory recount order.

2. RCW 29.64.030 requires that the canvassing board or their duly authorized representatives shall open the sealed containers which contain the ballots to be recounted in the presence of all witnesses who may be in attendance. If the candidates affected by the recount have been duly notified of the

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time and place of the recount, as specified in RCW 29.64.020, the board is not required to postpone the recount because the candidate or his representative is not present. Our office would recommend, however, that with respect to the recount in the 24th Legislative District, no sealed containers containing official ballots be opened without witnesses from the political parties or the press.

3. RCW 29.64.030 stipulates that official ballots shall only be handled by the members of the canvassing board, their duly authorized representatives, or employees of the board. Witnesses shall be permitted to see the ballots but they shall not be permitted to handle them.

4. The activities of the canvassing board should follow all open public meeting provisions of WAC 434-40-220 and Chapter 42.30 RCW, including the preparation of a record of all proceedings.

Re-tallying Ballots. Chapter 29.64 RCW establishes the procedures for recounting ballots. The following procedures for the recount of ballots are similar to those employed by the canvassing board in making its original canvass and certification.

1. Paper Ballots. The sealed containers containing the ballots to be recounted should be opened as each precinct is to be processed. In removing the seals, care should be taken to look for signs of any tampering. If the seals have numbers, a record should be made of the number, time, place, and witnesses present upon opening the container. The recount of paper ballots will, in most counties, be done by appointed bi-partisan election boards selected and sworn-in by the auditor as provided by Chapter 29.45 RCW. The recount should basically follow the procedures in RCW 29.54.043, except that only the votes cast in the position or measure to be recounted shall be re-tallied. Upon the completion of the recount of each container of ballots, the ballots should again be sealed and secured in the presence of witnesses, preferably those witnesses present at the recount.

2. Voting Machines. Pursuant to RCW 29.64.030, the voting machines should be opened by the board or its representatives, in the presence of the witnesses that may be in attendance. If there are numbered seals on the machines, a record should be kept of the number, time, place, and witnesses present upon the opening of the machines. In breaking the seals, care should be taken to look for signs of any tampering.

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The recanvass of votes cast on voting machines will be conducted by election boards appointed and sworn-in according to the procedures previously discussed. The canvassing board or appointed election board should follow the procedures in RCW 26.54.090, except that only those votes cast in the position or measure to be recounted, shall be checked. Upon the completion of a recount on voting machines, the machines should be sealed and secured in the presence of witnesses, preferably those witnesses present at the recount.

3. Electronic Voting Devices. The recount of ballots cast on electronic voting devices is to be conducted in the same manner in which those ballots were counted on the day of the election. The vote tally system shall be programmed in such a way so as to suppress all votes except for those cast on the position or measure to be recounted. Immediately prior to the counting of the ballots, each canvassing board should conduct a logic and accuracy test with the test deck which was provided by our office for the general election. After the completion of the logic and accuracy test, the seals on the containers containing the ballots to be recounted should be opened in the presence of the witnesses that may be in attendance. After the recount, the ballots should be sealed and secured in the presence of witnesses.

#### AMENDED ABSTRACTS AND CERTIFICATION

Pursuant to RCW 29.64.040, at the completion of the recount, the canvassing board will complete a new abstract showing the results in each precinct of the office which has been recounted and a certified copy of the new recount should be sent to the secretary of state. (Forms for recording the abstract of votes are enclosed.)

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#### APPENDIX "A"

##### SUGGESTED INSTRUCTIONS FOR OBSERVERS, MEDIA AND PUBLIC

The recount is another step in the statutory process for counting and canvassing the ballots for an election.

We intend to conduct the recount expeditiously and impartially. All activities will be as open and as visible as possible. If, at any time, the conduct or activities of the observers, media, or public become an unreasonable distraction, or otherwise impedes the progress of the recount, the process will stop until the situation has been corrected.

Conversations should be kept to a minimum and at a level that will not disturb the canvassing authority.

If anyone has a message, comment or question about the recount process, it should be directed to one of the supervisory personnel or a member of the canvassing board. Only official observers who have been designated by the candidates will be permitted in the immediate vicinity of recount boards.

Each candidate or the proponents or opponents to any measure will be permitted one observer for each recount board. Official observers have the right to witness the proceedings for the purpose of ascertaining that the statutes and the rules pertaining to the recount are properly carried out. Violations of either rules or statutes should be reported immediately to the supervisory personnel. It should be kept in mind that any person dissatisfied with the manner in which the recount is conducted or with any other aspect of the election has the right to pursue the matter through the judicial process.

If the recount is interrupted, all materials and supplies shall be carefully protected during the interruption.

In the event the recount is not completed on the same day it commences, all containers shall be resealed and secured in the same manner as following the official canvass.

**SECRETARY  
of STATE**

Ralph Munro

Legislative Building MS: AS-22  
Olympia, Washington 98504-0422  
(206) 753-7121**B U L L E T I N**

**TO: COUNTY AUDITORS**  
**FROM: OFFICE OF THE SECRETARY OF STATE**  
**DATE: DECEMBER 6, 1991**  
**SUBJECT: STATUTORY PROCEDURES AND SUGGESTED GUIDELINES FOR THE  
CONDUCT OF A MANDATORY RECOUNT**

We have determined that a statewide mandatory recount is required of votes cast on Initiative 120 which appeared on the November 5th General Election ballot.

The purpose of this bulletin is to provide election officials with a summary of the statutory requirements for the conduct of the recount and related procedures suggested by our office, after consultation with the Attorney General. Since many of the specific steps in the recount process are incorporated into Chapter 29.64 RCW only by reference, we felt that a brief summary of these requirements would be helpful. If your canvassing board has questions about the process, we will be available to help answer them.

**COSTS OF A MANDATORY RECOUNT**

Mandatory recounts of state measures are at state expense. An invoice voucher is enclosed with this bulletin. Please complete and return it as soon as possible. Costs of other recounts are borne by the jurisdictions responsible for the costs of the original election.

**TIME, PLACE AND NOTICE**

The procedural requirements for setting the time, place and for notifying affected persons for a mandatory recount are, by reference, the same as those specified in RCW 29.64.020. Upon receiving notice from the Secretary of State that a mandatory recount is required, the canvassing board should set a specific time, not more than four days after the receipt of the request for the recount from the Secretary of State, and a place for the recount.

**EXHIBIT [6]**

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Counties should mail a notice of the time and place of the recount to the proponents and opponents of Initiative 120 at the following addresses:

PRO:Lee Minto  
2211 E. Madison  
Seattle, WA 98112

CON:Kenneth D. VanDerhoef  
900 4th Ave Suite 110  
Bank of California Bldg.  
Seattle, WA 98164

The notice should be sent by certified mail at least two days in advance of the date of the recount. The notice should also inform the proponents and opponents that they may attend, witness, and be accompanied by legal counsel. A copy of the notice should also be mailed to the Secretary of State's office, the local news media and any other local interest groups or individuals.

Please notify Jean Womer or Kathy Campbell at (206) 753-2336 of the date and time set for the recount.

#### COUNTY CANVASSING BOARD

Explain Recount Process. We would recommend that each canvassing board first outline and explain for those attending the recount the sequence of events that will take place during the recount. This will help avoid questions and concerns by witnesses that might interrupt and interfere with the recount of the ballots.

Adoption of Operating Rules. Prior to the start of the recount, it is advisable that each canvassing board adopt appropriate rules of conduct for persons observing the recount. This will make it clear to those present, what is expected of them and to whom to direct questions or concerns. In Appendix "A" of this bulletin, we have enclosed suggested procedures for your consideration. Certainly, these rules may be varied depending upon the type of voting system and the facilities each county uses for the recount.

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Appointment of the Swearing-in of Election Board. In counties which use paper ballots or voting machines, the canvassing board should appoint and swear-in any election inspectors, judges, and clerks who may be assisting in the recount pursuant to the provisions of Chapter 29.45 RCW. These inspectors and judges should be given their oath of office during the initial meeting of the canvassing board. Suggested oaths, derived from RCW 29.45.090, 29.45.100, and 29.45.110, are attached to this bulletin as Appendix "B".

Challenge of Ballots Not Allowed. We are advised by the Attorney General that state law makes no provision for the challenge of ballots or voters (as provided in RCW 29.10.125) during a recount. The recount procedure provided by statute is a mechanical function of re-tallying the ballots cast and accepted as valid by the precinct election officers or the canvassing board during the canvass of the election. The decision of the precinct election officers or canvassing board with respect to the inclusion or exclusion of a particular ballot during the canvass is not in question during the recount.

#### RECOUNT PROCEDURES

Uniform Requirements. The following are statutory requirements that apply to all types of voting systems during a mandatory recount:

1. RCW 29.64.030 clearly directs that the canvassing board or their duly authorized representatives should not permit the re-checking of votes for election to any office or position, or upon any question or proposition, other than those specified in the mandatory recount order.
2. RCW 29.64.030 requires that the canvassing board or their duly authorized representatives should open the sealed containers which contain the ballots to be recounted in the presence of all witnesses in attendance. If the proponents and opponents affected by the recount have been duly notified of the time and place of the recount, as specified in RCW 29.64.020, the board is not required to postpone the recount because the proponents or opponents are not present.

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3. RCW 29.64.030 stipulates that official ballots shall only be handled by the members of the canvassing board, their duly authorized representatives, or employees of the board. Witnesses are permitted to see the ballots but they are not permitted to handle them.

4. The activities of the canvassing board should follow all open public meeting provisions of WAC 434-40-220 and Chapter 42.30 RCW, including the preparation of a record of all proceedings.

#### RE-TALLYING BALLOTS

Chapter 29.64 RCW establishes the procedures for recounting ballots. The following procedures for the recount of ballots are similar to those employed by the canvassing board in making its original canvass and certification.

1. Paper Ballots. The sealed containers containing the ballots to be recounted should be opened as each precinct is to be processed. In removing the seals, care should be taken to look for signs of any tampering. If the seals have numbers, a record should be made of the number, time, place and witnesses present upon opening the container. The recount of paper ballots will, in most counties, be done by appointed bi-partisan election boards selected and sworn in by the auditor as provided by Chapter 29.45 RCW. The recount should basically follow the procedures in RCW 29.54.043, except that only the votes cast on the measure or office to be recounted shall be re-tallied. Upon the completion of the recount of each container of ballots, the ballots should again be sealed and secured in the presence of witnesses, preferably those witnesses present at the recount.

2. Voting Machines. Pursuant to RCW 29.64.030, the voting machines should be opened by the board or its representatives, in the presence of the witnesses in attendance. If there are numbered seals on the machines, a record should be kept of the number, time, place and witnesses present upon the opening of the machines. In breaking the seals, care should be taken to look for signs of any tampering.

The recanvass of votes cast on voting machines will be conducted by election boards appointed and sworn in according to the procedures previously discussed. The canvassing board or

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appointed election board should follow the procedures in RCW 26.54.090, except that only those votes cast on the measure to be recounted, should be checked. Upon the completion of a recount on voting machines, the machines should be sealed and secured in the presence of witnesses, preferably those witnesses present at the recount.

3. Electronic Voting Devices. The recount of ballots cast on electronic voting devices should be conducted in the same manner in which those ballots were counted on the day of the election. The vote tally system should be programmed in such a way so as to suppress all votes except for those cast on the measure or office to be recounted. Immediately prior to the counting of the ballots, each canvassing board should conduct a logic and accuracy test with the test deck which was provided by our office for the general election. After the completion of the logic and accuracy test, the seals on the containers containing the ballots to be recounted should be opened in the presence of the witnesses that may be in attendance. After the recount, the ballots should be sealed and secured in the presence of witnesses.

#### AMENDED ABSTRACTS AND CERTIFICATION

Pursuant to RCW 29.64.040, at the completion of the recount, the canvassing board should complete a new abstract showing the results in each precinct of the measure or office which has been recounted and a certified copy of the new recount should be sent to the Secretary of State as promptly as possible. (Forms for recording the abstract of votes are enclosed.)

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#### APPENDIX "A"

##### SUGGESTED INSTRUCTIONS FOR OBSERVERS, MEDIA AND PUBLIC

The recount is another step in the statutory process for counting and canvassing the ballots for an election.

We intend to conduct the recount expeditiously and impartially. All activities will be as open and as visible as possible. If, at any time, the conduct or activities of the observers, media, or public become an unreasonable distraction, or otherwise impedes the progress of the recount, the process will stop until the situation has been corrected.

Conversations should be kept to a minimum and at a level that will not disturb the canvassing authority.

If anyone has a message, comment or question about the recount process, it should be directed to one of the supervisory personnel or a member of the canvassing board. Only official observers who have been designated by the candidates will be permitted in the immediate vicinity of recount boards.

Each candidate or the proponents or opponents to any measure will be permitted one observer for each recount board. Official observers have the right to witness the proceedings for the purpose of ascertaining that the statutes and the rules pertaining to the recount are properly carried out. Violations of either rules or statutes should be reported immediately to the supervisory personnel. It should be kept in mind that any person dissatisfied with the manner in which the recount is conducted or with any other aspect of the election has the right to pursue the matter through the judicial process.

If the recount is interrupted, all materials and supplies shall be carefully protected during the interruption.

In the event the recount is not completed on the same day it commences, all containers shall be resealed and secured in the same manner as following the official canvass.

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APPENDIX "B"

OATH OF INSPECTOR

"I, \_\_\_\_\_, do swear (or affirm) that I will duly attend to the ensuing recount, during the continuance thereof, as an inspector, and that I will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgement and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election."

OATH OF JUDGE

"I, \_\_\_\_\_, do swear (or affirm) that I will, as judge, duly attend the ensuing recount, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that I will make a true and perfect return of the said election and will in all things truly, impartially, and faithfully perform my duty respecting the same to the best of my judgement and abilities; and that I am not directly nor indirectly interested in any bet or wager on the result of this election."

OATH OF CLERKS

"We, and each of us, do swear (or affirm) that we will carefully and truly write down the number of votes given for each candidate at the election as read to us by the inspector and in all things truly and faithfully perform our duty respecting the same to the best of our judgement and abilities, and that we are not directly nor indirectly interested in any bet or wager on the result of this election."

**SECRETARY  
of STATE**

Ralph Munro



ELECTIONS DIVISION  
Voter Registration Services  
1007 S. Washington Street  
PO Box 40237  
Olympia, WA 98504-0237  
360/586-0400

BULLETIN

TO: COUNTY AUDITORS, 26th LEGISLATIVE DISTRICT  
FROM: OFFICE OF THE SECRETARY OF STATE  
DATE: NOVEMBER 20, 1996  
SUBJECT: STATUTORY PROCEDURES AND SUGGESTED GUIDELINES FOR  
THE CONDUCT OF A MANDATORY RECOUNT

This general election has resulted in a number of close elections. It appears that in the 26th Legislative District race a mandatory recount, as provided for by RCW 29.64.015, will be required. The purpose of this bulletin is to provide you with the timelines involved in the conduct of a recount and a suggested guide for observers. We would also recommend that counties thoroughly review Chapter 29.64 RCW.

ORDERING A MANDATORY RECOUNT

It is our intention to order the mandatory recount on Friday, November 22, by fax. No cost of the mandatory recount shall be charged to any candidate concerned. The cost of the mandatory recount is borne by the county.

TIME, PLACE AND NOTICE

The procedural requirements for setting the time, place and for notifying affected persons for a mandatory recount are, by reference, the same as those specified in RCW 29.64.020. Upon receiving notice from the secretary of state that a mandatory recount is required, the canvassing board should set a specific time, not more than four days after the receipt of the request for the recount from the secretary of state, and a place for the recount. This means you must begin your recount on either Monday or Tuesday, November 25 or November 26.

EXHIBIT 7

The county auditor is required to mail a notice of the time and place of the recount to each of the candidates for the office being recounted. The notice shall be mailed by certified mail at least two days in advance of the date of the recount. The notice should also inform the candidate that they may observe the recount and may be accompanied by legal counsel. A copy of the notice should also be mailed to the Secretary of State's Office, the press, political parties, campaign organizations and other interested groups or individuals in your county. We recommend you mail this notice as soon as possible but not later than November 22. The addresses of the candidates are:

Patricia Lantz  
P. O. Box 187  
Gig Harbor, WA 98335

Lois McMahan  
12001 SE Roper Lane  
Olalla, WA 98359

### COUNTY CANVASSING BOARD

Explain Recount Process. We would recommend that each canvassing board involved in a mandatory recount first outline and explain to those observing the recount the sequence of events that will take place during the recount.

Adoption of Operating Rules. Prior to the start of the recount, it is advisable that each canvassing board adopt appropriate rules of conduct for persons observing the recount. This will make it clear to those present what is expected of them and to whom to direct questions or concerns. In Appendix "A" of this bulletin, we have enclosed suggested procedures for your consideration. Certainly, these rules may be varied depending upon the type of voting system and the facilities each county uses for the recount.

Challenge of Ballots Not Allowed. We are advised by the Attorney General that state law makes no provision for the challenge of ballots or voters (as provided in RCW 29.10.125) during the recount. The recount procedure provided for by statute is a mechanical function of re-tallying the ballots cast and accepted as valid by the precinct election officers or the canvassing board during the canvass of the election. The decision of the canvassing board with respect to the inclusion or exclusion of a particular ballot during the canvass is not open to question during the recount.

### RECOUNT PROCEDURES

Uniform Requirements. The following are statutory requirements that apply to the conduct of recounts in counties using electronic voting devices:

1. RCW 29.64.030 clearly directs that the canvassing board or their duly authorized representatives shall not permit the re-checking of votes for election to any office or position, or upon any question or proposition, other than those for the office

for which the recount was called. You may only recount the 26th Legislative District race.

2. RCW 29.64.030 requires that the canvassing board or their duly authorized representatives shall open the sealed containers which contain the ballots to be recounted in the presence of all witnesses who may be in attendance. If the candidates affected by the recount have been duly notified of the time and place of the recount, as specified in RCW 29.64.020, the board is not required to postpone the recount because the candidate or his representative is not present. Our office would recommend, however, in this situation, that no sealed containers containing official ballots be opened without witnesses from political parties or the press.

3. RCW 29.64.030 stipulates that official ballots shall only be handled by the members of the canvassing board, their duly authorized representatives, or employees of the board. Witnesses shall be permitted to see the ballots but they shall not be permitted to handle them.

4. The activities of the canvassing board should follow all open public meeting provisions of WAC 434-40-220 and Chapter 42.30 RCW, including the preparation of a record of all proceedings.

5. Retallying Ballots Using Electronic Voting Devices. The recount of ballots cast on electronic voting devices is to be conducted in the same manner in which those ballots were counted on the day of the election. The vote tally system shall be programmed in such a way so as to suppress all votes except for those cast on the position or measure to be recounted. Immediately prior to the counting of the ballots, each canvassing board should conduct a logic and accuracy test with the test deck which was used for the general election. After the completion of the logic and accuracy test the seals on the containers containing the ballots to be recounted should be opened in the presence of the witnesses that may be in attendance. After the recount the ballots should be sealed and secured in the presence of witnesses.

#### AMENDED ABSTRACTS AND CERTIFICATION

Pursuant to RCW 29.64.040, at the completion of the recount, the canvassing board will complete a new abstract showing the votes cast in each precinct for the office which has been recounted, and a certified copy of the new abstract of votes should be sent to the secretary of state.

It is our intent to certify the results of the recount at the same time as we certify the results of the November 5, 1996 General Election. That certification will take place on Thursday, December 5. At that time it is possible that a manual recount may be requested on that race, or any other race, pursuant to RCW 29.64.010. The deadline for such a request is Tuesday, December 10. We will, of course, notify you immediately in the event such a request is received.

APPENDIX "A"

SUGGESTED INSTRUCTIONS FOR OBSERVERS, MEDIA AND PUBLIC

The recount is not an adversary proceeding, but is only another step in the statutory process for counting and canvassing the ballots for an election.

The proceeding will be conducted as expeditiously and as impartially as possible. Towards that end, all activities will be as open and as visible as possible to all who are concerned. If, at any time, the conduct or activities of the observers, media, or public become an unreasonable distraction, or otherwise impede the progress of the recount, the process will stop until the situation has been corrected or the room has been cleared.

Conversations are to be kept to a minimum and at a level that will not disturb the canvassing authority.

If anyone has a message, comment or question for, to, or about the proceedings in progress it should be directed one of the supervisory personnel or a member of the canvassing board. Only official observers who have been designated by the candidates will be permitted in the immediate vicinity of recount boards.

Each candidate or the proponents or opponents to any measure will be permitted one observer for each recount board. The media and public shall be allowed to observe upon authorization of the canvassing board to the point that it does not in any way interfere with the proceedings.

Official observers have the right of witnessing the proceedings only for the purpose of ascertaining if the statutes and the rules pertaining to the recount are properly carried out. Violations of, or exceptions to procedures will be immediately reported to the supervisory personnel.

If the process is stopped temporarily, the individual boards will cease counting at the completion of the precinct in progress. All materials and supplies shall be carefully protected during temporary stoppage.

In the event the procedure is not completed on the same day it commences, at a reasonable stopping time, and upon completion of the precincts being counted, all containers shall be resealed, turned over to the staff members for safe keeping, and the process continued the following day.

REPORT OF THE PARTIAL CANVASS OF THE  
 RETURNS OF THE STATE GENERAL ELECTION  
 HELD ON NOVEMBER 5, 1996

I, Ralph Munro, Secretary of State, do hereby certify that the following is a full, true, and correct abstract of votes cast at the State General Election held on the 5th day of November, 1996, as canvassed by me from the returns received from Kitsap(part), and Pierce(part) counties for the office of State Representative, 26th Legislative District, Position 1:

COUNTY	Patricia Lantz (D)	Lois McMahan (R)
Kitsap (part)	11,029	10,779
Pierce (part)	13,484	13,574
TOTAL	24,513	24,353

I further certify that the difference between the number of votes cast for the two candidates for this office (160) is less than one-half of one percent of the total vote cast for these two candidates ( $48,866 \times .005 = 244$  votes).

THEREFORE, pursuant to RCW 29.64.015, I hereby order that a recount be made of all votes cast for the office of State Representative, 26th Legislative District, Position 1 and that the county canvassing boards of the counties involved certify the results of said recount to the Secretary of State in the manner provided by RCW 29.64.040.

IN WITNESS THEREOF, I have set my hand and affixed the seal of the State of Washington this 21st day of November, 1996.

\_\_\_\_\_  
 Donald F. Whiting  
 Assistant Secretary of State

**SECRETARY  
of STATE**  
Ralph Munro



ELECTIONS DIVISION  
Legislative Building  
PO Box 40229  
Olympia, WA 98504-0229  
360/902-4161  
Fax 360/586-5829

## Memorandum

**To:** County Auditor and Election Supervisors  
**From:** Office of the Secretary of State Elections Division  
**Date:** 11/21/00  
**Re:** Procedures for possible recount in Senate and Secretary of State races

At this time it appears that a mandatory recount is likely in the Senate race and possible in the Secretary of State race. RCW 29.64.015 requires that a mandatory recount be conducted if the difference between the votes cast for the top two candidates is less than one-half of one percent of the total votes cast for both candidates. Please note that the recount must be made of votes cast for all candidates for the position. In anticipation of the recount this memo provides you a timeline for the recount and a number of suggestions for the process. We also recommend that election officials review RCW Chapter 29.62, 29.64 and WAC Chapter 434-262.

### TIMELINE FOR RECOUNT

#### Certification of the Election

We ask that on Wednesday November 22<sup>nd</sup> county auditors immediately transmit an abstract of the votes for the general election to the Secretary of State. The abstract should be mailed and the cumulative report and signed certificate should be faxed to 360.664.2971.

#### Ordering of Mandatory Recount

It is our intention to order the mandatory recount(s) if necessary by 12:00 pm on Monday, November 27<sup>th</sup> by fax. (RCW 29.64.015(1)(a))

EXHIBIT [8]

**Certified Mailing of Notice of Recount**

The county auditor is required to mail a notice to the candidates, by certified mail, of the date and time of the recount not less than two days before the date you set to recount the ballots. The notice should also inform the candidates of the date and time of the logic and accuracy test, and that candidates may observe the recount and be accompanied by legal counsel (RCW 29.64.020). A copy of the notice should also be mailed to the Office of the Secretary of State, local press, political parties, and other interested organizations or individuals in your county. We would also appreciate a call to our office at 360.902.4169 or e-mail [bill@sos.wa.gov](mailto:bill@sos.wa.gov) with the date and time you will begin the recount. Please note that this notice is to be sent to all the candidates whose name appeared on the ballot for that office. If you would like to begin the recount on Wednesday the 29<sup>th</sup> the notice would need to be mailed no later than Monday the 27<sup>th</sup>. To begin the recount earlier in the week you would need to send out the notice on Wednesday the 22<sup>nd</sup>. If you mail the notice on this date the notice should include language that you are setting the date and time in anticipation of a possible recount. (RCW 29.64.020) In any event the notice must be mailed no later than the day after we have ordered the recount.

We would also strongly recommend that you notify the candidates by either telephone or fax as soon as this determination is made. We have included the addresses and phone numbers of the candidates at the end of this memo.

**When the Recount must Begin**

The county canvassing board sets the time and place (or places) at which the recount will be conducted. The date must be less than five days after the day upon which the recount order is received from the Secretary of State. Therefore, if we order the recount on Monday the 27<sup>th</sup> you must begin the recount by Friday the 1<sup>st</sup>. (RCW 29.64.020) If you send out your notices on Wednesday the 22<sup>nd</sup> with the intention of starting the recount on Monday the 27<sup>th</sup> or Tuesday the 28<sup>th</sup>, it is important that you do not begin your recount until you have received an order from this office.

**Certification of the Amended Abstract**

Upon completion of the recount the canvassing board must certify an amended abstract of the recount and transmit it to the Office of the Secretary of State. (RCW 29.64.060)

**The Recount Process****System Programming and Logic and Accuracy Test**

A new Logic and Accuracy test must be done prior to the recount. Also, please note separate and distinct programming from that used to originally tabulate ballots. (RCW 29.64.010)

### **Notice of Canvassing Board Meetings**

Please note that this is a different requirement from the notice of the recount to the candidates. It applies only to meetings of the Canvassing Board and not to the performance of delegated functions. The activities of the canvassing board are subject to the provisions of the Open Public Meeting Act (RCW Chapter 42.30) and (WAC 434-262-025). Canvassing Board meetings associated with the recount would be regarded as "Special Meetings" under the Act. You are therefore required to provide notice, in writing, to all members of the Canvassing Board and to any media representatives who have requested notice of the meeting. The members and the press must receive it at least twenty-four hours before the meeting is held. The notice must state the time and place of the meeting and the business to be transacted. A general description such as "matters relating to recounting ballots" should be sufficient to describe the business to be transacted. (RCW 42.30.080) The draft form, attached at the end of this memo, prepared by King County for this purpose appears to suffice. Preparation of a record of all the proceedings of the canvassing board is also required.

If it is necessary for the Canvassing Board to meet more than once relating to the recount, you can provide one meeting notice, and then adjourn temporarily. In order to do this, it would be necessary to publicly announce each time when and where the Board will reconvene. Alternatively, you may provide notice of more than one special meeting. The purpose of this requirement is to enable the public to know when and where the Board will meet. (RCW 42.30.090)

### **Observers**

All candidates whose votes are being recounted may observe the recount accompanied by legal counsel, and have representatives observe the recount. Observers may be limited to not less than two for each side if more would delay or disrupt the recount process. (RCW 29.64.020, 29.64.030(2)). We suggest you adopt reasonable guidelines or procedures before the start of the recount and adhere to those procedures during the recount, (see the attached sheet for some recommended procedures for observers).

### **A Recount not a Recanvass**

The statutory recount procedure is a recount of the ballots and not a recanvass of the election. All questions regarding voter registration, voter qualification, and voter intent on ballots are determined by statutory procedure or the Canvassing Board before the election is certified by the Canvassing Boards. The guidelines for contesting an election after the certification of the election are found in RCW Chapter 29.65.

**Senate Candidate Addresses and Phone Numbers (This information was provided at the time the candidates filed for office)**

Maria CANTWELL  
904 7th Ave S, Edmonds, 98020, 425.697.5336

Slade GORTON  
9435 NE 18th, Clyde Hill, 98004, 425.635.0829

Jeff JARED  
830 Kirkland Way #203, Kirkland, 98033, 425.828.4545

**Secretary of State Candidate Addresses and Phone Numbers (This information was provided at the time the candidates filed for office)**

Don L. BONKER  
10535 Sunrise Bluff, Bainbridge Island, 98110, 206.842.7600

Sam REED  
PO Box 522, Olympia, 98507, 360.754.9291

J. Bradley GIBSON  
2600 2nd Ave #407, Seattle, 98121, 206.374.2480

Chris LOFTIS  
10920 Eatonville Hwy, Eatonville, 98328, 360.832.3365

**Secretary of State Address (for mailing notice of recount)**

Office of the Secretary of State  
Elections Division  
Att: Bill Huennkens  
PO Box 40229  
Olympia, WA 98504-0229

**Contact numbers for Secretary of State Staff**

For questions regarding this Memo contact:  
Bill Huennkens 360.902.4169

For questions regarding tabulator programming contact:  
Dave Elliott 360.586.8425

For other questions you can also contact the Certification and Training staff:  
John Pearson 360.586.8427  
Sheryl Moss 360.664.3653  
Tracy Buckles 360.664.3656



**KING COUNTY CANVASSING BOARD OF ELECTIONS**

**OPEN PUBLIC MEETING NOTICE  
NOVEMBER 7, 2000 - GENERAL ELECTION**

**RECOUNT OF BALLOTS**

The Canvassing Board of Elections for King County, or its designated representatives, pursuant to RCW 29.64.040 will convene a public meeting commencing at 9:00 am., Monday, November 27, 2000, in Room 553, King County Administration Building, 500 Fourth Avenue, Seattle, for the purpose conducting the recount of votes cast at the *General Election* held on *Tuesday, November 7, 2000*. The meeting, with daily recesses, will continue until *Friday, December 1, 2000* at which time, the recounts will be certified and the board will adjourn.

Additional information regarding the meetings can be obtained by calling the Elections Office at 296-1565.

The meetings of the Canvassing Board are open public meetings under the applicable provisions of Chapter 42.30 RCW. A record of the proceedings of the Canvassing Board shall be made on tape and maintained in the Records and Elections Division office and shall be available for public inspection and copying. The record shall be retained for the same period of time as required for the retention of ballots.

Dated this *22nd day of November 2000*.

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Robert Bruce, Chair  
King County Canvassing Board



## King County Canvassing Board Guidelines and Procedures

### **GUIDELINES FOR ELECTION RECOUNT FOR OBSERVERS, MEDIA AND PUBLIC**

- A. **General:** The recount is not an adversary proceeding. It is only another step in the statutory process for counting and canvassing the ballots for an election.

The proceedings will be conducted as expeditiously and impartially as possible. Towards that end, all activities will be conducted as open and visible as possible to all concerned.

Due to space restrictions, it may be necessary to prioritize the spaces allocated for viewing. Priority shall be given in the following order: to the candidates of the effected race or their designated representative or to the designated representative for the proponents and opponents of any measure, to their counsel if any, to the observers from the two major political parties, and then to any additional observers for the candidates or ballot measure proponents/opponents as may be provided by these guidelines.

The next priority shall be to the general public and the media. Special arrangements will be made for visual media.

If at any time the conduct or activities of the observers, media, or public becomes an unreasonable distraction or otherwise impedes the progress of the recount, the process will be stopped until the situation has been corrected or the room has been cleared.

Conversations are to be kept to a minimum and at a level that will not disturb the counting process or the canvassing authority.

If anyone has a message, comment or question for, to or about the proceedings in progress, it should be directed to one of the supervisory personnel or a member of the canvassing board.

- B. **Observers:** For each recount, observers from the two major political parties will be requested, and if provided, will be considered the official observers of the proceedings. Each candidate or the proponents or opponents to any measure also will be permitted one observer for each counting board.

The media and the public shall be allowed to observe as space permits to the point that it does not in any way interfere with the proceedings, as determined by the canvassing authority.

- C. **Observers' Guidelines:** Official observers have the right of witnessing the proceedings only for the purpose of ascertaining if the statutes and rules pertaining to recounts are properly carried out. Violations of, or exceptions to, procedures will be immediately reported to the supervisory personnel. If correction or satisfaction is not received there, other proceedings at law are available to the aggrieved party.

State law does not make a provision for the challenge of ballots or voters during a recount. The recount procedure provided for by statute is a mechanical function of retallying the ballots cast and accepted as

valid by the precinct election officials or the canvassing board during the canvass of the election. The decision of these officials with respect to the inclusion or exclusion of a particular ballot during the canvass is NOT in question during the recount.

- D. **Type of Recount:** The statutes provide that the person requesting a recount may specify whether the recount shall be conducted using the vote tallying system or shall be counted by hand. Where neither is specified, the vote tallying system shall be used, unless the canvassing board determines otherwise. Mandatory recounts shall be by the same method as the original counting process, unless otherwise required by law.

When the vote tallying system is used, there shall be only one counting board, those associated with feeding the ballots to the card readers and controlling the central processing unit.

When a manual count is required, there will be one counting board for approximately every 1,000 to 1,500 ballots to be counted.

- E. **Recount by Electronic Vote Tallying System:** The recount of ballots using the electronic vote tallying system shall be conducted in essentially the same manner in which those ballots were counted during the canvassing of the vote. A distinct computer program will be prepared for the tallying of the votes which will suppress all votes on the ballots except for the contest being recounted. Immediately prior to the recounting of the ballots, a separate logic and accuracy test of the system shall be conducted for the benefit of the observers.

- F. **Interruption and Continuation of the Recount:** If the process is stopped temporarily, the individual boards will cease counting at the completion of the precinct in progress. All materials and supplies shall be carefully protected during temporary stoppage.

In the event the process is not completed on the same day that it commences, at a reasonable stopping time, and upon completion of the precincts being counted, all containers shall be resealed and turned over to the Election staff members for safe keeping. The process shall be continued the following day.

- F. **Completion:** On completion of the recount, the results will be formally reviewed and approved by the Canvassing Board. If a different count results from the original canvass, the Board will then complete a new abstract showing the results in each precinct of the office which has been recounted. The certified canvass results will then be amended as appropriate.

The amended certified canvass report will normally be available to the candidates and all others concerned within twenty-four hours of the completion of the recount, unless completed on a Friday, in which case the report may not be available until at least the following Monday. The Canvassing Board does not intend to publish interim reports of the recount.

No. 76321-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DAVID T. McDONALD, et al.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, et al.,

Respondents

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**DECLARATION OF PAUL MILLER**

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Thomas F. Ahearn, WSBA No. 14844  
Jeffery A. Richard, WSBA No. 28219  
Hugh D. Spitzer, WSBA No. 5827  
Marco J. Magnano, WSBA No. 1293  
SPECIAL ASSISTANT ATTORNEYS GENERAL\*  
Foster Pepper & Shefelman PLLC  
1111 Third Avenue, suite 3400  
Seattle, WA 98101-3299  
Telephone: (206) 447-8934/447-4400  
Telefax: (206) 749-1902/447-9700  
E-mail: [ahearne@foster.com](mailto:ahearne@foster.com)

Attorneys for Respondent Secretary of State Sam Reed

*\*Due to the fact that the current Attorney General is one of the candidates in the election being recounted, the above private counsel (instead of the Attorney General's office) is representing the Secretary of State in this matter.*

PAUL MILLER declares:

1. Capacity. I am over eighteen years of age and competent to testify. I have worked in the field of elections for fifteen years. I am currently employed in the Election Division of the Office of the Secretary of State, where my duties include matters relating to the certification of voting systems and the certification of elections, as well as the oversight of signature verification for statewide initiatives and referenda. I have personal knowledge of the facts stated below.

2. Signature verification is the process of determining whether a signature is the authentic signature of a qualified voter. Signature verification can also include ancillary issues including whether the signer is a resident of the jurisdiction and whether the signer meets other qualifications required in the election law. A signature verification system in any election office takes into consideration the following: existing state election law, the funds and resources available to the local elections administrators, the types of signature verification methods available, and the development of rules and procedures.

3. Due to the differences between counties, especially regarding funding and resource issues, use of technology, experience of staff, and personal knowledge about the voters, signature verification systems may differ from county to county. It is my experience that in every county, the provisional ballots are accepted by matching a voter record in the registration file. Smaller, rural counties often have personal knowledge of their voters that large, urban counties do not have. For

example, Columbia County's statement in Exhibit 1 of the Affidavit of Joshua C. Jungman, said "...it isn't a big issue, as they know most of the voters. This year all of the signatures matched, and they usually all do match." Another example is Adams County. Upon request, they checked every provisional ballot signature and found that all 73 matched the signature on file in their office for each ballot. In every case, provisional ballots were checked against the voter registration file for name, presence of a signature, and the date of birth, as required by WAC 434-253-047. In my capacity at the Secretary of State's Office I am aware of no provisional ballots being accepted in any county that did not have a record in the local voter registration file.

4. There are many factors that affect signature verification. Historically, in the conduct of signature verification for initiatives, I have seen fluctuations between counties' valid and invalid rates. For example, Initiative 790 was randomly checked, according to WAC 434-379-010, in 2002, and the signatures from King and Snohomish Counties were found to be 77% valid, Pierce County had only 75% valid signatures, while the rest of the state had 85% valid signatures. These signatures were checked by the same people using the same methods and supervision. The differences can be attributed to variables such as differences in how the signatures were actually gathered. For example, people signing in a public space may be in a hurry and often sign differently than when they are signing a document such as a voter registration form sitting down.

Another issue is the age of the original signature used for comparison. People also often change their signatures over time.

5. The Elections Division inquired into every situation where the difference between the original November 2 General Election count and the machine recount was at least 9 ballots cast.

6. Cowlitz County counted 99 fewer ballots in the recount than in the original count. During the recount, it was discovered that 99 ballots had been counted twice during the original count. This was found by matching the number of voters voting to the number of ballots counted in the recount.

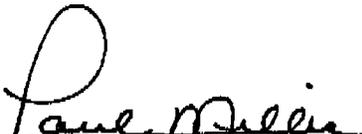
7. Franklin County found that the number of total ballots did not equal the number of votes in the Governor's race. Upon investigation, it was found that Franklin County's system uses a multiple card ballot. The card used for the "ballots" number is the "A" card, while the Governor's race was located on the "C" card. Some voters chose to send back the "C" card and not the "A" card. As a result, more "votes" were cast for Governor than were shown as "ballots" cast.

8. Ferry County had fewer ballots cast in the recount than in the original count. Upon investigation, one precinct was found to be missing in the recount with undervotes (ballots where no choice for governor was made) not reported. In the original count, undervotes would only apply to a race, but in the recount undervotes becomes a blank ballot and should be reported as a ballot cast. In its final recount report, the Ferry County Canvassing Board corrected this discrepancy.

9. Pend Oreille County found fewer ballots cast in the recount than in the original count. Again, it was found that they had not reported undervotes in the recount.

10. Human error is inevitable but election administration seeks to minimize and manage human error to achieve the highest levels of accuracy possible. In the counties that I assisted, I am satisfied that the machine recount identified and resolved human error from the original count and explains the major differences between the two counts. I have not seen any unexplainable irregularity or inconsistency in this election.

11. Closing. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my own knowledge. Executed at Olympia Washington this 7<sup>th</sup> day of December, 2004.

  
Paul Miller