

No. 76321-6

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID T. McDONALD, et al.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, et al.,

Respondents.

DECLARATION OF DEAN C. LOGAN

NORM MALENG
King County Prosecuting Attorney

THOMAS KUFFEL, WSBA No. 20118
JANINE JOLY, WSBA No. 27314
Senior Deputy Prosecuting Attorneys

Attorneys for Respondents Dean Logan
and King County Records, Elections and
Licensing Services Division

King County Prosecuting Attorney
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516 Third Avenue
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(206) 296-9015

I, Dean Logan, declare as follows:

1. I am the Director of the King County Records, Elections and Licensing Services Division. I am over eighteen years old and competent to testify. I have personal knowledge of the facts stated below.

2. Under the King County Charter, my position is equivalent to the position of County Auditor for purposes of administering elections. In this capacity, I am the *ex officio* supervisor of all primaries and elections, general or special, held in King County. I have held this position since August 2003. Prior to that time I was the State Elections Director for the Office of the Secretary of State and held that position for two years. I have worked in election administration in Washington for the last fifteen years.

3. I have reviewed the pleadings Petitioners filed on Friday, December 3, 2004, in the above-entitled matter. The relief sought by Petitioners in this action is based, in part, on alleged errors that occurred in King County during the canvassing or machine recount of votes, and alleged errors that Petitioners claim will occur during the forthcoming manual recount. This declaration is submitted to address Petitioners' key allegations with respect to these issues.

The Manual Recount

4. On Monday, December 6, 2004, the Secretary of State directed that a manual recount in the 2004 gubernatorial election be conducted in all counties in the state.

5. Because RCW 29A.64.030 requires the recount to commence less than three days after receiving the Secretary of State's directive, and requires all county canvassing boards (or their respective designees) to provide two days' advance notice of the time and place of the recount to the candidates and affected parties, the recount will commence on Wednesday, December 8. As a practical matter, the actual retabulating of votes in King County likely will not begin until Friday, December 10, or Saturday, December 11, since it will take at least two days for recount staff to open the sealed boxes and sort the ballots.

6. King County has conducted numerous manual recounts over the years. In determining the final procedures for conducting a manual recount, the County looks to three sources for guidance: the legal requirements prescribed by state statute and administrative rule; the local recount procedures adopted by the King County Canvassing Board; and any practical considerations involved in conducting the recount.

7. The relevant statutory requirements are found in Title 29A RCW, which sets forth the election laws of this state, and Chapter 29A.64

RCW, which specifically governs recounts. These requirements, along with existing statewide administrative rules of potential application, are summarized in the manual recount guidelines issued by the Secretary of State on December 3, 2004. *See*

<http://www.secstate.wa.gov/elections/pdf/Governor%20Manual%20Recount%20Guidelines2.pdf>. Pertinent requirements include, but are not

limited, to the following:

- Witnesses shall be permitted to observe the ballots and process of tabulating the votes, but they shall not be permitted to handle the ballots. RCW 29A.64.041(1).
- Persons representing the candidates affected by the recount may observe the recount. RCW 29A.64.041(3).
- The observers may not make a record of the names, addresses, or other information on the ballots, poll books, or applications for absentee ballots unless authorized by the superior court. RCW 29A.64.041(3).
- The county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. RCW 29A.64.041(3).

8. In addition to these legal requirements, the King County Canvassing Board has adopted local procedures for conducting a manual recount. A copy of these procedures is attached hereto as Exhibit A. In the context of the recount to be conducted in this case, the following procedures apply:

- Teams of two members each plus a single recorder will perform counting.
- The ballots will be distributed by precinct among teams.

- The ballots of each precinct will be divided approximately evenly between the team members who shall separate the ballots into piles: one pile for each candidate receiving a vote; one pile for “no counts”, or undervotes; one pile for overvotes, if any (i.e., where a selection is made for more than one candidate); and, a separate pile for write-ins.
- The first team member will then proceed to check and count all ballots marked for a candidate.
- The second team member will do likewise for ballots marked for a candidate.
- On the completion of the count, each team member will record the count on a tally sheet identifying both the precinct and the position number.
- When completed, each team member will turn the tally sheet upside down and pass it and the ballots to the other team member. Each will in turn recount the other ballots, writing the count on their tally sheet.
- The tally sheet is given to the recorder who shall check to see that the counts are the same. If not, the recorder shall direct the members to recount again until each gets the same count. If the counts are the same, the recorder shall record the count on the summary tally sheet, advising the observers of a completed precinct count.
- When the count of all precincts is completed, the recorder shall add up the precinct count for a total count for each position. The summary tally sheet data will be entered on to redundant spreadsheets which shall include a column for the mandatory machine recount numbers for each precinct, and a “difference” column to indicate by positive or negative numbers the difference from the original to the recount. The completed summary tally sheet shall be given to the elections Superintendent or designee.

A true and correct copy of these procedures is attached hereto as Exhibit A.

9. A third source of guidance to the County for establishing final procedures for a manual recount is any practical considerations that

may exist. These involve addressing such issues as the physical layout of the recount facilities, security requirements, and the need to balance the sincere desire for elections staff to be responsive to the numerous issues raised by party observers with need to ensure that workers are able to perform their duties.

10. During the canvass and the machine recount for the 2004 General Election, I spent many hours in the counting center and supervised the activities there. While I was in the counting center I had to remind observers not to disrupt elections staff by talking in and around the areas where staff was handling ballots and equipment. I had to speak with many observers and their supervisors about this more than once. I anticipate that if observers are standing at each and every recount table during the manual recount, any talking by them will disrupt recount board members as they are manually counting ballots. Disruptions of a manual recount board member's concentration may result in the board member losing count and having to begin counting an entire stack of ballots again.

11. Based on all of the foregoing sources, the County expects to conduct the recount directed by the Secretary of State as set forth in the letter attached hereto as Exhibit B, dated December 2, 2004, from me to Greg Rodriguez, Chair of the King County Democratic Central Committee, and Pat Herbold, Chair of the King County Republican

Central Committee. As the letter describes, the recount will occur in a facility located in Tukwila that the County has leased from the King County Airport. The facility has approximately 16,000 square feet of space. The majority of this space is in one large room on the main floor, which is where the recount will be performed. An upper floor in the building has space for a break room and a coat check area. No jackets, bags or writing instruments may be brought into the recount area.

12. Employee training is scheduled for Tuesday, December 7, 2004. The recount will be continuous on a daily basis with completion expected by December 22, 2004. Three person recount boards will be hired to do the sorting and counting of ballots. The boards will record their counts on tally sheets with the data entered into redundant spreadsheets for accumulating the results.

13. To address concerns about who is selected to help conduct the recount, and understanding that for space and security reasons it is not possible to have observers from each party—Republican, Democrat and Libertarian—at every recount board table, King County is planning to comprise each recount board with a member referred by the Democratic Party, a member referred by the Republican Party, and a recorder recruited by King County Elections. All three members of the board will be employed by King County and subject to Elections Division workplace

rules and guidelines. The Elections staffing plan contemplates 80 of these boards, or 240 workers in total. To this end, the County asked for and received on Monday, December 6, lists from each party containing proposed representatives.

14. Members of the recount boards will be asked to subscribe to an oath attesting to their role in the recount process. The work schedule will be a six-day workweek with ten-hour work shifts daily. Party designees will be asked to complete a King County employment application and they must be available to work the entire recount period. These short-term temporary positions will be compensated at \$12.70 per hour under the classification of Administrative Office Assistant.

15. In addition to the recount boards, the entire recount process will be open to observation by political party observers and the public. County election coordinators will be asking for five official political party observers who will be scheduled and paid by King County Elections. Elections will also conduct observer training prior to the recount. A copy of the King County Canvassing Board Guidelines for Election Recount for Observers, Media and Public is attached to hereto as Exhibit C.

16. The County does not intend to limit the number of additional party and campaign observers, but those observers will not be employed or paid by King County Elections. Elections will restrict

observers to certain areas during the recount to ensure that the recount is continuous and that there is no disruption to the process. Elections will provide seventeen different observer stations in addition to a large observer congregating area, which will allow observers to rotate and observe throughout the room. Each candidate or party will be permitted up to two observers at each observer station at any given time. A true and correct copy of the County's proposed floor plan for the manual recount is attached hereto as Exhibit D. Observer stations are indicated on the floor plan as rectangles with cross hash marks.

17. The Petitioners maintain that the foregoing recount plan is unlawful because it denies the public and parties their rights to observe. Petitioner's Motion at page 19. This is not so. Witnesses will be able to "observe the ballots and the process of tabulating votes" as prescribed by RCW 29A.64.041(3). Petitioners seem to demand that they also be entitled to observe what is written on each ballot, i.e., how the voter voted. The statute does not define the term "observation" in that way, and frequently it does not work that way in practice. For example, during a machine recount observers do not see what is written on each ballot. Election workers take the ballots, sort them and place them into the tabulation machines. Observers view the process, but do not see how the voter voted. Furthermore, the practical effect of the Petitioners' position

would require the County to make space for up to an additional 240 people in the room—three observers at each table (one Republican, one Democrat and one Libertarian)—and thus double the total number of people in the recount room to nearly 500. The room is not well-suited to accommodate this type of increase. Such an increase is only likely to contribute to an environment where board members are unable to concentrate on the important task at hand. It is clear from the floor plan that the recount tables are already close together. Wedging any more people into that space let alone up to 240 more people, will diminish the board members’ ability to adequately concentrate on the important work before them.

Signature Verification

18. In accordance with RCW 29A.60.140, the King County Canvassing Board has delegated certain canvassing duties to me as the Director of Elections and my elections staff. One of these duties is the verification of signatures on absentee and provisional ballots. *See* RCW 29A.40.110(3)(“[The canvassing board or its designated representatives] shall verify that the voter’s signature on the return envelope [for the absentee ballot] is the same as the signature of that voter in the registration files of the county.”); *see also*, WAC 434-240-240 (“The canvassing board must compare the signature on the return envelope, or on a copy of the return envelope, with the signature as it appears on the voter’s voter

registration card.”); WAC 434-253-047 (“A provisional ballot cannot be counted unless the voter’s name, signature and the date of birth, if available, matches a voter registration record.”).

19. Pursuant to WAC 434-240-240, prior to the election, elections staff is trained on King County’s system for implementing the state election laws for signature matching. *See* WAC 434-240-240 (“Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures.”) King County’s system is to look for at least three points of similarity between the signature on absentee and provisional ballot envelopes and the signature of that voter in the voter registration files. If at least three points of similarity are found, the signature is verified. If less than three points are found, the signature is rejected. If elections staff has any question as to whether a signature does or does not match, they are instructed to refer the signature to a supervisor. If the supervisor also believes there is a question as to the validity of the signature, it is referred to the canvassing board for determination.

20. The canvassing board includes myself as chair, Dan Satterberg, Chief of Staff for the King County Prosecuting Attorney’s Office, and Dwight Pelz, Metropolitan King County Councilmember. The three of us (or in some cases a quorum of two due to a board member’s absence from a particular meeting) examine all ballots referred to us by

elections staff, including ballots that were referred due to a question on the validity of a signature. This examination of ballots (or ballot envelopes) pursuant to King County's three points system occurs at an open public meeting where we take a vote on the record as to the disposition of a referred ballot. After the canvassing board votes, elections staff is given specific instructions by the canvassing board as to whether and how the ballot should be processed. Throughout the 2004 General Election, observers, including those from the three major political parties, have attended canvassing board meetings and witnessed this process.

21. In canvassing the November 2, 2004 General Election, there were some provisional ballots out of the over 31,700 provisional ballots received, where signatures were rejected either because the signatures did not match or because a signature was missing. Each of the ballots where signatures did not match went through a second review by elections staff using the same three point system used in the first review and as described in paragraph 19 above. If there was any doubt or question in the elections staff member's mind as to the validity of the signature on this second review, it was referred to the canvassing board for determination.

Providing Additional Information to Correct Problems
With Absentee Ballots

22. As required by WAC 434-240-235, if an absentee voter neglected to sign the affidavit on the absentee return envelope, a letter was sent to the voter informing him that he could provide his signature in person or by mail so that his ballot could be counted if otherwise valid. These absentee voters were informed that they needed to provide the signature by November 16, 4:30 p.m., a deadline set by the WAC. See WAC 434-240-235 (Voter may appear in person to sign the envelope or mail a copy so that it arrives “not later than the day before certification of the primary or election.”)

23. Though it is not required by WAC 434-240-235, King County also mailed letters to absentee voters who did sign the return envelope, but the signature on the envelope did not match the signature on the voter’s registration record using the three point matching system. These letters informed the voters that they could provide an updated signature. The letters included notice of the same November 16, 4:30 p.m. deadline for submitting an updated signature for the November 2, 2004 General Election.

Providing Additional Information to Correct Problems
With Provisional Ballots

24. For provisional ballots, King County meets the requirements of WAC 434-253-048 and the federal Help America Vote Act, 42 U.S.C. sec. 15482(a)(5) for a free access provisional ballot notification system by operating an Internet website and a toll-free access system where voters can learn whether their provisional ballot was counted and if not, why it was not counted.

25. When individuals in King County vote a provisional ballot, either the poll worker or the voter removes the perforated stub of the provisional ballot envelope and the voter takes the stub home. The voter is given the Internet website address, the toll-free number and instructions for using the reference number on the envelope stub to find out whether or not his/her provisional ballot was counted and if it was not, why.

26. In addition to voters who have a reference number with which to check the status of their provisional ballot, there are approximately 1200 provisional ballot voters in King County who did not receive such a number. In some cases, these voters are registered in King County, but they voted in other counties and their ballots were forwarded to King County by the auditors of those other counties. There are also approximately 500 voters who were unable to use a standard provisional

ballot envelope with the reference number because their polling place ran out of provisional ballot envelopes. Poll workers in some instances made photocopies of the envelopes so that the voter could fill out the form and provide proper information, but these voters did not get an individual reference number. Though they cannot access the online system, each of these voters can call the toll-free number and learn the disposition of their ballot by giving their name and other identifying information, if needed. No reference number is required.

27. The disposition of each provisional ballot where a disposition had so far been determined, was made available to the individual voter via the methods described above beginning on Monday, November 8, 2004, and was updated as provisional ballots were processed. WAC 434-253-048 only requires that the information had to be available by November 24, 2004. (“Provisional ballot information shall be available on a county’s free access system within one week **following** the certification of the primary or election.”) (Emphasis added.)

28. Provisional ballot voters who used King County’s online system and found that their vote was not going to be counted, were also notified of the opportunity to call or come to the elections office to provide additional information by November 16, 2004, at 4:30 p.m., in order to attempt to remedy the problem that was preventing their ballot

from being counted. If, for example, a voter's signature on the provisional ballot envelope did not match the signature on file, that voter could have mailed or brought in an updated signature. If a voter was not validly registered because a required piece of information, such as a residential address, was omitted by the voter from his/her voter registration form, that voter could give the information to King County prior to the deadline and the registration would have been processed as of the date it was submitted and the provisional ballot could then be counted if otherwise valid. If provisional ballot voters called the toll free telephone number instead, elections staff was instructed to give them the same information and inform them of the November 16, 4:30 p.m. deadline.

29. As indicated at Exhibit A to the Declaration of Gregory V. Roeben, notices provided to some voters by groups and individuals other than King County also apparently notified voters of the deadline for submitting additional information or updating signatures. ("Bring it to your county auditor's office by 4:00 p.m. TUESDAY AFTERNOON! (Emphasis in original.))

30. Allowing provisional ballot voters an opportunity to correct issues that may lead to their ballot not being counted is not required by state or federal law to the best of my knowledge. One of the reasons that I believe this to be true is that WAC 434-253-049(6) allows a county to

make information regarding the disposition of provisional ballots available after certification when it would be too late to tally a previously invalid ballot.

31. I am aware of no state law or rule that sets a specific deadline for a vote to submit additional information regarding provisional ballots or to provide an updated signature for absentee ballots. The absence of such a deadline is likely due to the fact that county auditors are not required to accept this information and apply it to the ballots in question during the canvass of an election. However, to the best of my knowledge, many counties do have the capacity to accept and apply the additional information during the canvass of an election in order to count ballots that would otherwise have to be rejected.

32. One of the allegations made by Petitioners is that “some [provisional] ballots were not considered based on counties refusal to accept signature validation documents submitted on the day of certification, November 17.” Petitioners’ Motion and Brief in Support of Emergency Partial Relief (“Petitioners’ Motion and Brief”), at page 4. As an alleged example, Petitioners state that “[I]n King County, at least 24 of these validation efforts were rejected.” *Id.* It is correct that the deadline for submittal of additional information described in paragraph 28 above was November 16, at 4:30 p.m., the day before certification of the

election. This deadline was used for two reasons. First, as described in paragraph 22 above, this is the same deadline set in WAC 434-240-235 for absentee voters who failed to sign their absentee envelopes, to come in and sign, or to provide a signature by mail. It is therefore consistent to use the same deadline since no other deadline is provided in statute or rule. Second, the deadline is set out of administrative necessity. Depending on the individual ballot, there may still be several steps to complete beyond signature verification before a provisional ballot can be tallied. For example in some cases, individuals voted provisional ballots at a polling place other than their designated polling place. These ballots must be reviewed to ensure that the only votes tallied are those for contests and measures for which that voter is eligible to vote. By voting in a different precinct, the voter may have attempted to vote in legislative district contests for which he/she is ineligible. These ballots will need to be enhanced or duplicated to ensure that only votes for proper contests and measures are counted. In other cases, a voter may have failed to follow instructions for filling in the oval. Elections staff will have to review the ballot to see if voter intent is clear and in some cases the ballot will need to be referred to the canvassing board for determination. Depending on the canvassing board's determination, these ballots may also need to be enhanced or duplicated. Because each of these steps takes time, it would

be administratively difficult and in some cases impossible, to accept and process additional information for provisional and absentee ballots on the day of certification. A deadline of 4:30 p.m. on the day prior to certification allows elections staff to work into the evening processing all ballots and gives us time to call an additional canvassing board meeting on the morning of certification if ballots are going to be referred to the canvassing board. Furthermore, the auditor's abstract of votes and certifications of the election must be prepared prior to the canvassing board meeting on certification day. If additional information is accepted and processed throughout the day, we will be unable to declare and certify final results by close of business on the day required by RCW 29A.60.190.

33. I declare under penalty of perjury under the laws of the state of Washington that the foregoing in true and correct and of my own knowledge, and that I executed this declaration at Seattle in the County of King, this 7th day of December, 2004.


DEAN C. LOGAN

Exhibit A

11 MANUAL COUNTING OF BALLOTS

11.1. General.

The usual method of counting ballots for the canvassing of elections under the purview of the Board shall be by computerized vote tallying equipment as provided for in Chapter 29.33 RCW and in Chapter 4 of these rules. However, situations may occur from time-to-time that will require or call for a manual counting of these ballots. These situations include:

- a. Whenever the difference in the number of votes cast for the candidates is less than 150 votes and less than one-fourth of one percent (0.025%) of the total number votes cast for both candidates, in which case, the recount shall be by hand (RCW 29.64.010(6)), or
- b. *When the computerized vote tallying system becomes inoperative, or the tabulation program is shown to be defective, or*
- c. *During a recount of the ballots where fewer than 200 ballots are involved, or when specified by the party requesting a recount or when required by law, or. (See Chapter 10.)*
- d. *When a ballot type is used which cannot be processed by the vote tallying equipment, or*
- e. *When so directed by the Board.*

11.2. Counting Ballots.

- a. *Counting will be performed by a team or teams of two members each plus a single recorder.*
- b. *The ballots will be distributed by precinct among teams, if more than one team.*
- c. *The ballots of each precinct will be divided approximately evenly between the team members who shall separate the ballots by positions. i.e., one pile for each position designated for the race or measure being considered; one pile for "no counts", or under votes (i.e., none of the designated positions are marked), and if any occur, a separate pile for over votes (i.e., where more than one position per office or measure is made unless a choice of more than one is allowed). The team shall count only the marks for a single race or measure at a time.*
- d. *The first team member will then proceed to check and count all ballots marked for the first position, and if more than two positions, for each odd-numbered position beyond the first.*

- e. *The second team member will do likewise for ballots marked in the second position, and if necessary, for any additional even-numbered positions; i.e., the fourth, sixth, etc.*

- f. *On the completion of the count, the team member will record the count on a tally sheet identifying both the precinct and the position numbers.*
- g. *When completed, each team member will turn the tally sheet upside down and pass it and the ballots to the other team member. Each will in turn recount the other ballots, writing the count on the reverse (should now be the "upside") of the tally sheet.*
- h. *The tally sheet is given to the recorder who shall check to see that the counts are the same. If not, the recorder shall direct the members to recount again until each gets the same count. If the counts are the same, the recorder shall record the count on the summary tally sheet, advising the observers of a completed precinct count.*

11.3. Recording the Count.

When the count of all precincts is completed, the recorder shall add up the precinct count for a total count for each position. If being used for a recount, the summary tally sheet shall include a column for the original count for each precinct for each race and measure for comparison, and a "difference" column to indicate by positive or negative numbers the difference from the original to the recount. The completed summary tally sheet shall be given to the Elections Superintendent or designee.

11.4 Completion

When all ballots have been counted they shall be secured and sealed. The results of the count shall be entered into the Manager's Abstract of Votes, or, if part of a formal recount, prepared as an amendment to the certified abstract of votes as specified in Section 10.6b of these rules.

Exhibit B



King County

Records, Elections and Licensing Services Division

Department of Executive Services

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206-296-1540
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December 2, 2004

Greg Rodriguez, Chair
King County Democratic Central Committee
157 Yesler Way, Ste. 510
Seattle, WA 98104

Pat Herbold, Chair
King County Republican Central Committee
PO Box 18884
Bellevue, WA 98009

Dear Chairs Rodriguez and Herbold:

In anticipation of a requested manual recount of the votes cast for the Office of Governor in the November 2, 2004 General Election, I am writing to ask the assistance of the political parties in ensuring the integrity of the recount process.

For planning purposes, we are anticipating a countywide manual recount starting on Wednesday, December 8, 2004, with employee training scheduled for Tuesday, December 7, 2004. The recount will be continuous on a daily basis with completion expected by December 22, 2004. Three-person recount boards will be hired to do the sorting and counting of ballots. The boards will record their counts on tally sheets with the data entered into redundant spreadsheets for accumulating the results.

To address concerns about who is selected to help conduct this recount, and understanding that for space and security reasons it is not possible to have observers from each party at every recount board table, we would like each recount board to include a Democratic designee, a Republican designee, and a recorder recruited by King County Elections. All three members of the board will be employed by King County and subject to our workplace rules and guidelines. Our staffing plan contemplates 80 of these boards, so we are asking your assistance in recruiting 80 representatives for your respective party.

Members of the recount boards will be asked to subscribe to an oath attesting to their role in the recount process. Our work schedule will be a six-day work week with ten-hour work shifts daily. Your designees will be asked to complete a King County employment application and they must be

available to work the entire recount period. These short-term temporary positions will be compensated at \$13.70 per hour under the classification of Administrative Office Assistant.

Andrea Torland in our office is available to assist you with any additional employment information you may need. You can contact her at (206) 205-6594.

In order to meet our time line, we will need your list of designees by **2 p.m. on Monday, December 6, 2004**. If possible, please include extra names to allow for cancellations and relief scheduling. In addition, as the hiring authority, King County reserves the right to approve the final candidates selected and appointed to each recount board. Should either party fail to provide the requisite number of designees, King County will assign regular short-term temporary election workers without regard to party affiliation. Once we have your lists, we will contact the individual designees with the reporting schedule and location for their assigned activity.

In addition to the recount boards, the entire recount process will be open to observation by political party observers and the public. Our election coordinators will be asking for five official political party observers who will be scheduled and paid by King County Elections.

We *do not* intend to limit the number of additional party and campaign observers, but those observers will not be employed or paid by King County Elections. We *will* restrict observers to certain areas during the recount to ensure that the recount is continuous and that there is no disruption to the process. We will provide several different observer stations, which will allow observers to rotate and observe throughout the room.

In addition to the training that will be provided on Tuesday, December 7, 2004 for recount staff, we are planning to conduct observer training. While the details have yet to be worked out, it is likely this will occur Tuesday evening, December 7, 2004.

Thank you in advance for your assistance in this endeavor. I believe we share a common desire for any recount process to run in an orderly and open environment that allows for efficiency and timely completion. Once an order for a requested recount is received, we will issue official notifications to you and to the gubernatorial candidates with the final details and procedures. In the meantime, please contact me or Bill Huennekens, Superintendent of Elections, for any further information.

Sincerely,



Dean C. Logan
Director

cc: Paul Berendt, Chair, Washington State Democratic Party
Chris Vance, Chair, Washington State Republican Party
Noel Frame, Gregoire Campaign Representative
Dan Brady, Rossi Campaign Representative

Exhibit C

APPENDIX G

KING COUNTY CANVASSING BOARD 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.

APPENDIX G

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.

- G. **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.

Exhibit D

