

NO. 76321-6

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

DAVID T. MCDONALD, et al.,

Petitioners,

vs.

SECRETARY OF STATE SAM REED, et al.,

Respondents.

DECLARATION OF BOB TERWILLIGER

BOB TERWILLIGER hereby declares as follows:

1. I am the elected Auditor of Snohomish County. I am over eighteen years of age and competent to testify. I have personal knowledge of the facts stated below.

2. As County Auditor, I am the ex officio supervisor of all primaries and elections, general or special held in Snohomish County. I have held this position since June 1993. Prior to that time, I was the Chief Deputy Auditor for the Snohomish County Auditor's Office and held that position from 1983 until 1993. I have worked in election administration in Washington for the last 21 years.

3. 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 8th. As a practical matter, the actual retabulating of votes in Snohomish County likely will not begin until Wednesday, December 15th, since it will take at least five days for recount staff to open the sealed boxes and sort the absentee ballots, and to prepare the DRE ballots for manual counting.

4. In the context of the recount to be conducted in this case, the following procedures apply:

There will be 27 tables with chairs in the Tabulating Room for hand counters. Each table will have candidate vote sheets, two red pens and post-it notes. There will also be two tables with two chairs each for the Central Tally function. Located at these tables will be two red pens, a canvas from the machine recount, a list of all precincts and a wire basket. An additional table will be located just inside the Tabulating Room for the Distribution Function.

Distribution of Ballots

Precinct boxes with ballots and the precinct tally sheet will be removed from the locking ballot cabinets and placed on the distribution table. Boxes of ballots (only one per team) will be distributed by runners to the counting tables.

Teams will remove all the ballots from a precinct box and place the box sideways on the table. The ballots will be separated into two stacks, one for each counter. Each counter will separate their ballots into 6 piles – one for each candidate, one for the overvotes, one for the undervotes and one for write-ins.

For any ballot that does not have an arrow connected but that may have a vote indicated, the counting team shall notify a supervisor. The ballot will be isolated from the other ballots on the counting table and referred to the Canvassing Board for final determination.

Each counter will count one stack of ballots at a time by placing ballots in groups of twenty. Upon completion of one group, the total votes will be entered on the candidate vote sheet. After counting each group and recording the totals, the counters will compare their candidate vote sheets. If the numbers match, the total numbers will be transferred to the precinct tally sheet and initialed by each counter. If the numbers do not match, the group of ballots will be re-tallied until the counters agree. If a ballot has been referred to the Canvassing Board, a notation to that effect will be made on the precinct tally sheet. All ballots and the precinct tally sheet are returned to the ballot box and labeled with a post-it as being completed. The counting teams will notify the runners by raising their hands that they have finished with a precinct. The runners will pick up the completed precinct and deposit it at the Central Tally table. A new precinct box will be delivered to the counting table only after the completed precinct box is removed.

Central Tally Station

Boxes of counted ballots with the precinct tally sheet are delivered from the counting tables to the Central Tally Station by runners. The totals on the precinct tally sheet are compared to the totals from the machine recount canvas. Precincts with write-ins for the three major candidates will be highlighted on the machine recount canvas in order to account for the number discrepancy. If the totals match, the numbers are transferred to the Central Tally list by precinct by absentee and poll votes, undervotes, overvotes and write-ins. If the numbers do not match the machine recount canvas, the supervisor is notified. The supervisor will remove the ballot box with the precinct tally sheet and redistribute the ballot box to another counting team for an additional tally.

The second counting team will follow the previous instructions but upon completion, the supervisor will collect the box. The second precinct tally sheet will be compared with the machine recount canvass. If the totals match, the numbers will be transferred to the Central Tally list. If the numbers do not match, the first precinct tally sheet and the second precinct tally sheet will be compared and if those totals match, the numbers will be transferred to the Central Tall list. The ballots will continue to be tallied until there are two counts with the same totals.

After the numbers have been transferred to the Central Tally list, the precinct tally sheet will be placed in a basket on the table and the ballot box will be returned to the locking cabinet.

End of Day

The numbers from the Central Tally list will be transferred to an Excel spreadsheet on the Elections laptop computer. This will be done by Counting Center staff. All entries will be verified by the official party observers prior to printing the document. The official party observers will initial the printed report. The following day, a starting report will be printed and the party observers will verify the numbers have not been altered.

5. The recount and preparation for the recount will occur in the Bethany Tabulation Center, Pacific Avenue, Everett, WA. The facility has approximately 3,500 square feet of space. The majority of this space is in two large rooms, but the recount will occur in the front Tabulation Room for the most part.

6. Observer training will occur each day, prior to the beginning of processing or counting at 8:15 AM. The processing will be continuous on a daily basis from 8:15-5:00 PM with one hour for lunch from December 8th through 14th. The recount itself will be continuous

on a daily basis from 8:15 AM-5:00 PM with a one hour lunch break, and will occur beginning December 15th, with certification on December 22, 2004.

7. 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 team table, Snohomish County is planning to compose each recount team with a member referred by the Democratic Party and a member referred by the Republican Party, and as always, we will have Supervisors that are party designated, one from the Democratic Party and one from the Republican party. These team members are paid by Snohomish County as statutorily required, but they take an oath to the ballot counting process, not directly to the County Auditor. The Elections staffing plan contemplates 27 of these counting teams, or 54 workers in total. Additionally we anticipate 10 other people to assist with the central tally operation and ballot running.

8. Members of the recount teams will be asked to subscribe to an oath attesting to their role in the recount process. They are paid at the rate of \$7.50/hour as per the Snohomish County Master Agreement. The

recount work schedule will be an eight-hour day from December 15th through 21st.

9. As regards the accommodation of observers during the impending manual recount for the 2004 Governor election, the following summarizes the pertinent statutory provisions:

Witnesses 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).

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).

The recounting of ballots shall be continuous.

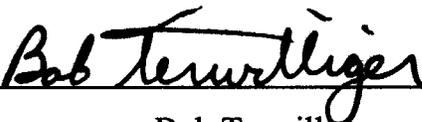
10. In addition to the recount teams, the entire recount process will be open to observation by political party observers and the public.

We will allow two (2) official observers at any given time, per political party, and two (2) observers per campaign who will be allowed to observe at the table level all ballot counting operations – a total of eight (8) official observers. The County does not intend to limit the number of additional party and campaign observers, but the freedoms as outlined above will apply to official observers only, so as to ensure that the recount is continuous and that there is no disruption of the process. There will be a cordoned off area for observers, within viewing distance of the process.

11. Contrary to the assertions of the Petitioners in their “Motion and Brief in Support of Emergency Partial Relief,” the method of conducting the manual recount described above does not deny the public or the parties their rights to observe. Witnesses will be able to “observe the ballots and the process of tabulating votes” as prescribed by RCW 29A.64.041. Petitioners appear to argue that they are entitled to observe which votes are recorded on each ballot. However, RCW 29A.64.041 states that witnesses may observe “ballots,” not “votes.” For example, during a machine tabulation or recount, observers do not see the actual votes marked on each ballot. Election workers take the ballots, sort them and place them into the tabulation machines.

Observers view the ballots and the process, but do not see how the voters voted. Moreover, the practical effect of the Petitioners' position would require the County to make space for an additional 61 people in the Tabulation Room—three observers at each table (one Republican, one Democrat and one Libertarian)—and thus increase the total number of people in the recount room to nearly 135. This is beyond the physical capacity of the room to be used for the recount.

12. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and to the best of my knowledge, and that I executed this declaration at Everett in the County of Snohomish, this 7th th day of December, 2004.



Bob Terwilliger