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

TIMOTHY BORDERS; THOMAS
CANTERBURY; TOM HUFF; MARGIE
FERRIS; PAUL ELVIG; EDWARD
MONAGHAN; and CHRISTOPHER VANCE,
Washington residents and electors, and the Rossi
for Governor Campaign, a candidate committee,

No. 05-2-00027-3

SUMMONS

Petitioners,

v.

KING COUNTY and DEAN LOGAN, its
Director of Records, Elections and Licensing
Services; ADAMS COUNTY and NANCY
MCBROOM, its Auditor; ASOTIN COUNTY
and ELAINE JOHNSTON, its Auditor;
BENTON COUNTY and BOBBIE GAGNER,
its Auditor; CHELAN COUNTY and
EVELYN L. ARNOLD, its Auditor; CLALLUM
COUNTY and CATHLEEN MCKEOWN, its
Auditor; CLARK COUNTY and GREG
KIMSEY, its Auditor; COLUMBIA COUNTY
and SHARON RICHTER, its Auditor;
COWLITZ COUNTY and KRISTINA
SWANSON, its Auditor and Ex-Officio
Supervisor of Elections; DOUGLAS COUNTY
and THAD DUVALL, its Auditor; FERRY
COUNTY and CLYDENE BOLINGER, its
Auditor; FRANKLIN COUNTY and ZONA
LENHART, its Auditor; GARFIELD COUNTY
and DONNA DEAL, its Auditor; GRANT
COUNTY and BILL VARNEY, its Auditor;
GRAYS HARBOR COUNTY and VERN
SPATZ, its Auditor; ISLAND COUNTY and
SUZANNE SINCLAIR, its Auditor;
JEFFERSON COUNTY and DONNA
ELDRIDGE, its Auditor; KITSAP COUNTY
and KAREN FLYNN, its Auditor; KITTITAS

RECORDER'S NOTE:
NOT AN ORIGINAL DOCUMENT

SUMMONS - 1

SEA 1594799v1 55441-3

Davis Wright Tremaine LLP
LAW OFFICES
2400 Century Square • 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7499

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1 COUNTY and JUDY PLESS, its Auditor;
 2 KLIKITAT COUNTY and DIANA
 3 HOUSDEN, its Auditor; LEWIS COUNTY and
 4 GARY ZANDELL, its Auditor; LINCOLN
 5 COUNTY and SHELLY JOHNSTON, its
 6 Auditor; MASON COUNTY and ALLAN T.
 7 BROTCHE, its Auditor; OKANOGAN
 8 COUNTY and PEGGY ROBBINS, its Auditor;
 9 PACIFIC COUNTY and PAT GARDNER, its
 10 Auditor; PEND OREILLE COUNTY and
 11 CARLA M. HECKFORD, its Auditor; PIERCE
 12 COUNTY and PAT MCCARTHY, its Auditor;
 13 SAN JUAN COUNTY and SI A. STEPHENS,
 14 its Auditor; SKAGIT COUNTY and NORMA
 15 HICKOCK-BRUMMETT, its Auditor;
 16 SKAMANIA COUNTY and MIKE
 17 GARVISON, its Auditor; SNOHOMISH
 18 COUNTY and BOB TERWILLIGER, its
 19 Auditor; SPOKANE COUNTY and VICKY
 20 DALTON, its Auditor; STEVENS COUNTY
 21 and TIM GRAY, its Auditor; THURSTON
 22 COUNTY and KIM WYMAN, its Auditor;
 23 WAHKIAKUM COUNTY and DIANE L.
 24 TISCHER, its Auditor; WALLA WALLA
 25 COUNTY and KAREN MARTIN, its Auditor;
 26 WHATCOM COUNTY and SHIRLEY
 27 FORSLOF, its Auditor; WHITMAN COUNTY
 and EUNICE COKER, its Auditor, and
 YAKIMA COUNTY and CORKY
 MATTINGLY, its Auditor; SAM REED, in his
 official capacity as Secretary of State for the
 State of Washington; FRANK CHOPP, Speaker
 of the Washington State House of
 Representatives; and LIEUTENANT
 GOVERNOR BRAD OWEN, President of the
 Washington State Senate,

Respondents.

TO: DEFENDANT MIKE GARVISON, Auditor of SKAMANIA COUNTY
 AND TO: SKAMANIA COUNTY Auditor, on behalf of SKAMANIA COUNTY

A lawsuit has been started against you in the above-entitled Court by Timothy
 Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan,
 and Christopher Vance, Washington residents and electors, and the Rossi for Governor

SUMMONS - 2
 SEA 1594799v1 55441-3

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 Seattle, Washington 98101-1688
 (206) 622-2150 • Fax: (206) 628-7609

1 Campaign, Petitioners. Petitioners' claim is stated in the written complaint, a copy of which
2 is served upon you with this summons.

3 In order to defend against this lawsuit, you must respond to the complaint by
4 stating your defense in writing, and serve a copy upon the undersigned attorney for the
5 petitioner within 20 days after the service of this summons, excluding the day of service or
6 such earlier time as the court may direct pursuant to RCW 29A.65.011, *et. seq.*, or a
7 default judgment may be entered against you without notice. A default judgment is one
8 where plaintiff is entitled to what he asks for because you have not responded. If you serve
9 a notice of appearance on the undersigned attorney, you are entitled to notice before a
10 default judgment may be entered.

11 If you wish to seek the advice of an attorney in this matter, you should do so
12 promptly so that your written response, if any, may be served on time.

13 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
14 State of Washington.

15 DATED this 7th day of January, 2005.

16
17 Davis Wright Tremaine LLP
Attorneys for Petitioners

18
19 By Robert J. Maguire
20 Harry Korrell, WSBA #23173
21 Robert J. Maguire, WSBA #29909
22
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24
25
26
27

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

Timothy Borders, Thomas Canterbury, Tom
Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services;
Adams County and Nancy McBroom, its
Auditor; Asotin County and Elaine Johnston, its
Auditor; Benton County and Bobbie Gagner, its
Auditor; Chelan County and Evelyn L. Arnold,
its Auditor; Clallum County and Cathleen
McKeown, its Auditor; Clark County and Greg
Kimsey, its Auditor; Columbia County and
Sharon Richter, its Auditor; Cowlitz County and
Kristina Swanson, its Auditor and Ex-Officio
Supervisor of Elections, Douglas County and
Thad Duvall, its Auditor; Ferry County and
Clydene Bolinger, its Auditor; Franklin County
and Zona Lenhart, its Auditor; Garfield County
and Donna Deal, its Auditor; Grant County and
Bill Varney, its Auditor; Grays Harbor County
and Vern Spatz, its Auditor; Island County and
Suzanne Sinclair, its Auditor; Jefferson County
and Donna Eldridge, its Auditor; Kitsap County
and Karen Flynn, its Auditor; Kittitas County
and Judy Pless, its Auditor; Klickitat County and
Diana Housden, its Auditor; Lewis County and
Gary Zandell, its Auditor; Lincoln County and
Shelly Johnston, its Auditor; Mason County and
Allan T. Brotche, its Auditor; Okanogan County
and Peggy Robbins, its Auditor; Pacific County,

No.

**ELECTION CONTEST
PETITION**

ELECTION CONTEST PETITION - 1

SEA 1594500v1 55441-3

Davis Wright Tremaine LLP
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and Pat Gardner, its Auditor; Pend Oreille
County and Carla M. Heckford, its Auditor;
Pierce County and Pat McCarthy, its Auditor;
San Juan County and Si A. Stephens, its Auditor;
Skagit County and Norma Hickock-Brummett,
its Auditor; Skamania County and Mike
Garvison, its Auditor; Snohomish County and
Bob Terwilliger, its Auditor; Spokane County
and Vicky Dalton, its Auditor; Stevens County
and Tim Gray, its Auditor; Thurston County and
Kim Wyman, its Auditor; Wahkiakum County
and Diane L. Tischer, its Auditor; Walla Walla
County and Karen Martin, its Auditor; Whatcom
County and Shirley Forslof, its Auditor;
Whitman County and Eunice Coker, its Auditor,
and Yakima County and Corky Mattingly, its
Auditor, Sam Reed, in his official capacity as
Secretary of State for the State of Washington,
Frank Chopp, Speaker of the Washington State
House of Representatives, and Lieutenant
Governor Brad Owen, President of the
Washington State Senate,

Respondents.

"[T]he right of suffrage can be denied by a debasement or
dilution of the weight of a citizen's vote just as effectively as
by wholly prohibiting the free exercise of the franchise."

Gold Bar Citizens for Good Government v. Whalen, 99
Wn.2d 724, 730 (1983).

"Where appropriate, [the court's powers] include the power
to order a new election where no other remedy would
adequately correct distortions in election results caused by
fraud or neglect." *Foulkes v. Hays*, 85 Wn.2d 629, 633
(1975).

I. INTRODUCTION

This is an action contesting the 2004 election for the Office of Governor.

Petitioners believe that the number of illegal votes counted, and the number of valid votes
improperly rejected in this election, are so great as to render the true result of the election
uncertain and likely unknowable. So long as the uncertainty remains, a cloud will exist
over the legitimacy of any administration taking office. Because the true results cannot be

1 ascertained, a new election must occur promptly to restore the integrity of Washington's
2 election process.

3 II. PETITIONERS -- CONTESTANTS

4 Petitioners are registered voters in the State of Washington and the Rossi for
5 Governor Campaign.

6 III. RESPONDENTS -- PARTIES CHARGED WITH ERROR

7 Respondents are the 39 counties of the State of Washington and the respective chief
8 election officials of those counties, Sam Reed, Secretary of State for the State of
9 Washington, and the two members of the Legislature charged with signing the Certificate
10 of Election for the office of Governor.

11 IV. SUMMARY OF CLAIMS AND RELIEF SOUGHT

12 This action is an election contest under RCW 29A.68, the court's plenary powers
13 under Wash. Const. Art. 4, sec. 6, and other applicable law, and Petitioners seek a hearing
14 under 29A.68.050. Because of the errors, omissions, misconduct, neglect, and other
15 wrongful acts of respondent election officials, petitioners contest the election and the right
16 of Christine Gregoire to be issued a certificate of election for the office of Governor. The
17 affidavits and evidence to be developed in discovery in advance of the hearing will show
18 the following:

19 Respondents and their agents have failed to perform their obligations under the
20 constitutions of the State of Washington and the United States and election laws, they have
21 made errors and been negligent, and they have committed other wrongful acts that render
22 the true results of the election impossible to determine. Respondents counted many more
23 votes than were cast by legitimate, registered voters.

24 Respondents counted votes by felons and others ineligible to vote and votes cast in
25 the name of deceased persons. Respondents failed to secure properly certain absentee,
26 provisional, and other ballots, and failed to implement procedures to avoid mistakes,
27

1 errors, and alteration or submission of invalid votes, and as a result the improperly secured
2 ballots were not properly counted.

3 King County and other Respondents failed to implement uniform procedures for
4 the canvassing of overvotes and undervotes and some of them changed their procedures in
5 the middle of the election and recount. King County and other respondents violated
6 Washington law by marking on the ballots in such a manner as to obscure the original
7 marks by the voter, making it impossible to review what the voter's intent was.

8 In addition, the votes of lawfully registered voters were not counted, and the failure
9 by Respondents to count them, when presented with evidence of Respondents' errors, was
10 arbitrary, capricious, wrongful, and a violation of their obligations under Washington's
11 election laws. Moreover, Petitioners' rights to equal protection of the laws have been
12 violated by the inconsistent treatment of ballots wrongly rejected by Respondents, and the
13 lawful, valid votes of electors, including the petitioners, have been diluted by the counting
14 of invalid or illegal votes.

15 As a result of Respondents' actions, it is impossible to determine which candidate
16 received the greatest number of legitimate, valid, legal votes. Pursuant to the provisions of
17 RCW 29A.68, the court's plenary powers, and other applicable law the court should
18 declare the election void, set it aside, order that any certification of the results of the
19 election and any certificate of election issued as a result of the election are also void, and
20 order that a new election be conducted as soon as practicable.

21 The court should also order the implementation of procedures to prevent the
22 recurrence of the errors, mistakes, neglect, and wrongful acts that plagued this contested
23 election.

24 V. JURISDICTION AND VENUE

25 This court has jurisdiction to resolve this election contest pursuant to RCW
26 29A.68.011 *et seq.*, and the court's plenary powers. *See Foulkes v. Hays*, 85 Wn.2d 629,

1 633 (1975) (court has power under plenary power and election contest statute to resolve
2 election contest, nullify election, and order a new election); *Becker v. County of Pierce*,
3 126 Wn.2d 11, 20-22 (1995) (affirming resolution of election contest in race for state
4 auditor, a state executive office under Wash. Const. Art. 3, sec. 1).

5 Pursuant to RCW 36.01.050, 4.12.050, 4.12.025, and 29A.68.011, venue in this
6 court is proper. Venue is proper because the Respondents and parties charged with error
7 include Chelan County and its auditor; because one of the Petitioners, Thomas L.
8 Canterbury, is a resident of Chelan County who suffered harm in Chelan County by the
9 actions of Chelan County and its auditor in Chelan County; and Chelan County is adjacent
10 to several other Respondent Counties charged with wrongdoing and neglect.

11 VI. GROUNDS AND CAUSES FOR THE CONTEST

12 A. As set forth and supported in the Affidavit of Chris Vance submitted
13 herewith and additional affidavits of electors to be filed, as well as in additional evidence
14 to be developed in discovery and presented at a hearing pursuant to RCW 29A.68.050,
15 respondents have committed errors, omissions, mistakes, neglect, and other wrongful acts,
16 including but not limited to the following:

17 1. Employing procedures that resulted in the counting of votes far in
18 excess of the number of lawfully registered electors who participated in the
19 election. Specifically, based on information currently available, it appears there are
20 thousands more votes than individuals credited with voting in King County, Pierce
21 County, Snohomish County, Kitsap County, Clark County, Clallam County,
22 Douglas County, Island County, Jefferson County, Lewis County, Lincoln County,
23 Pend Oreille County, Skamania County, Stevens County, and Whatcom County.

24 2. Counting provisional ballots in violation of the law by failing to first
25 investigate the provisional ballot to verify that the person was a lawfully registered
26 voter and had not already voted in the election.

1 3. Counting the votes of convicted felons who have not had their civil
2 rights restored.

3 4. Counting invalid votes submitted in the name of persons who died
4 before the election.

5 5. Counting ballots submitted by persons other than the registered
6 voter in whose name the ballots were submitted – including, according to media
7 reports, at least two absentee ballots counted in Lewis County.

8 6. Failing to ensure that military overseas and other absentee voters
9 received absentee ballots in a timely manner.

10 7. Violating Petitioners' rights to equal protection of the laws by only
11 correcting in some counties, but not others, errors made by election workers and
12 discovered after the initial certification. The inconsistent treatment includes King
13 County's selective correction of errors regarding ballots for which election officials
14 had apparently made mistakes in verifying signatures and its refusal to correct
15 additional signature verification errors when presented with declarations from
16 voters whose ballots had been mistakenly rejected. As a result, ballots within King
17 County were treated unequally. Also, selected ballots in King County were treated
18 differently than ballots in other counties. Apparently based on the instructions of
19 the Secretary of State, after King County selectively corrected certain errors the
20 following additional counties violated Petitioners' rights to equal protection of the
21 laws by refusing to correct errors when presented evidence from lawfully registered
22 voters of the respective county's mistakes:

23
24 Asotin
25 Clallum
26 Douglas
27 Grays Harbor
Kitsap
Lewis

Benton
Clark
Franklin
Island
Kittitas
Mason

Chelan
Cowlitz
Grant
Jefferson
Klickitat
Okanogan

Pacific
Skamania
Thurston
Yakima

Pend Oreille
Snohomish
Walla Walla

Pierce
Spokane
Whatcom

8. Violating Petitioners' rights to equal protection of the laws by allowing third parties to solicit, collect, and present for consideration revised election documents (ballot envelope signatures or registration signatures) in an effort to correct mismatched signatures and by doing so only in some counties but not in others.

9. Violating Petitioners' rights to equal protection of the laws by failing to establish and follow uniform standards regarding the treatment of ballots containing marks in addition to a single, completely filled-in oval for one candidate ("overvotes") and containing a less than completely filled-in oval for a candidate ("undervotes"), with the result that similar ballots reviewed at different times or by different individuals were treated differently.

10. Violating Petitioners' rights to equal protection of the laws by, *inter alia*, failing to provide consistent standards for the treatment of overvotes and undervotes and by King County's changing, several times during the course of the canvass of votes and the recounts, the standards by which election officials decided how and whether to count ballots containing overvotes or undervotes and ballots containing efforts by voters to write in the names of one of the candidates on the ballot.

11. Violating the provisions of Washington election law regarding the duplication and enhancement of ballots by marking on ballots in ways that permanently obscured the original marks by the voters making it impossible to now discern voters' intent.

B. As a result of Respondents' errors, omissions, misconduct, neglect, and other wrongful acts, Respondents counted more invalid, illegal, and/or otherwise wrongful

ELECTION CONTEST PETITION - 7

SEA 1594500v1 55441-3

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1 votes than the number of votes certified by the Secretary of State as separating the
2 candidates. Specifically,

- 3 1. Many, potentially thousands, more votes were counted than were
4 cast by lawfully registered voters;
- 5 2. Many provisional ballots were counted without any determination
6 being made that the voter was entitled to vote or had not already voted;
- 7 3. Convicted felons who have not had their civil rights restored voted
8 and had their votes counted;
- 9 4. Invalid votes were counted in the name of deceased persons;
- 10 5. Absentee ballots signed by individuals other than the registered
11 voter to whom they were sent were counted;
- 12 6. Invalid votes that were submitted by people who submitted more
13 than one ballot were improperly counted;
- 14 7. There is apparently no way to retrieve any such ballots described
15 above from the pool of ballots counted so as to determine the correct number of
16 valid votes for each candidate such that the true results of the election are uncertain
17 and unknowable;
- 18 8. Military overseas and other absentee voters may have been
19 disenfranchised by administrative error;
- 20 9. Illegitimate, invalid and/or illegal votes were cast, and in such
21 number that if given to Ms. Gregoire, will, if taken from her, reduce the number of
22 her legal votes below the number of legal votes given to Mr. Rossi
23 (RCW 29A.68.090); and
- 24 10. It appears that a sufficient number of illegitimate, invalid and/or
25 illegal votes has been given to Ms. Gregoire that, if taken from her, would reduce
26 the number of her legal votes below the number of votes given to Mr. Rossi, after
27

1 deducting therefrom the illegal votes that may be shown to have been given to him
2 (RCW 29A.68.110).

3 C. As a result of Respondents' errors, omissions, misconduct, neglect and
4 other wrongful acts, Respondents failed to count more lawful votes for Candidate Rossi
5 than the number of votes separating the candidates. The number of individuals who state
6 that they voted for Mr. Rossi but their ballots were wrongfully rejected by Respondents
7 exceeds the number of votes certified by the Secretary of State as separating the two
8 candidates by more than double.

9 D. As a result of Respondents' actions and the inconsistent treatment of ballots
10 wrongly rejected by election workers, valid ballots from lawfully registered voters were
11 rejected and not counted in select counties. Thus, an elector had a greater chance of having
12 his or her ballot counted in some counties than in others, which constitutes a violation of
13 Petitioners' rights to equal protection of the law.

14 E. As a result of Respondents' actions, confidential information regarding
15 provisional ballot voters was disclosed and third parties were allowed to collect and
16 present revised election or registration documents in some but not all counties. Thus, an
17 elector in some counties had a greater chance of having his or her ballot counted in some
18 counties than in others, which constitutes a violation of Petitioners' rights to equal
19 protection of the law.

20 F. The actions and omissions described in Sections V(A) through (E) herein
21 constitute neglect of duty, errors, and misconduct on the part of Respondent election
22 officers, in violation of Washington's election laws, and as a result of these errors and
23 omissions, an error has occurred in the Secretary of State's certification of the election
24 returns and is about to occur in the issuance of a certificate of election to Ms. Gregoire.

25 G. In addition, as a result of the actions and omissions of Respondents,
26 Washington voters have been deprived of a free and fair election:
27

- 1 1. Petitioners have been deprived of the equal protection of the laws
2 guaranteed by the United States and Washington State Constitutions;
3 2. The valid votes of Petitioners were either not counted or diluted by
4 illegitimate, invalid, and/or illegal votes; and
5 3. It is impossible to determine which gubernatorial candidate received
6 the greatest number of legitimate votes.

7 **VII. RELIEF REQUESTED**

8 For the foregoing reasons, Petitioners respectfully ask the court to expedite the
9 hearing of this case and issue an order:

- 10 (1) declaring the election null and void;
11 (2) setting the election aside;
12 (3) declaring that any certification of the results of the election and any
13 certificate of election issued as a result of the election are also void;
14 (4) directing that a new election be conducted as soon as practicable;
15 (5) granting any other relief the court deems equitable and just.

16
17 DATED this 7th day of January, 2005.

18 Davis Wright Tremaine LLP
19 Attorneys for Petitioners

20
21 By Robert J. Maguire

22 Harry J. F. Kornell
23 WSBA #23193
24 Robert J. Maguire
25 WSBA #29909
26
27

01/07/05 18:12 FAX 4256467207

Rossi for Governor

001

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

Timothy Borders, Thomas Canterbury, Tom
Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
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Auditor; Asotin County and Elaine Johnston, its
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McKeown, its Auditor; Clark County and Greg
Kinsey, its Auditor; Columbia County and
Sharon Richter, its Auditor; Cowlitz County and
Kristina Swanson, its Auditor and Ex-Officio
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Diana Housden, its Auditor; Lewis County and
Gary Zandell, its Auditor; Lincoln County and
Shelly Johnston, its Auditor; Mason County and
Allan T. Brotsche, its Auditor; Okanogan County
and Peggy Robbins, its Auditor; Pacific County,

No.

**AFFIDAVIT OF CHRIS
VANCE IN SUPPORT OF
ELECTION CONTEST
PETITION**

**AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 1**

SEA 1594579v1 53441-3

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01/07/05 10:13 FAX 4256487207

Rossi for Governor

002

and Pat Gardner, its Auditor; Pend Oreille County and Carla M. Heckford, its Auditor; Pierce County and Pat McCarthy, its Auditor; San Juan County and Si A. Stephens, its Auditor; Skagit County and Norma Hickock-Brummett, its Auditor; Skamania County and Mike Garvison, its Auditor; Snohomish County and Bob Terwilliger, its Auditor; Spokane County and Vicky Dalton, its Auditor; Stevens County and Tim Gray, its Auditor; Thurston County and Kim Wyman, its Auditor; Wahkiakum County and Diane L. Tischer, its Auditor; Walla Walla County and Karen Martin, its Auditor; Whatcom County and Shirley Forslof, its Auditor; Whitman County and Eunice Coker, its Auditor, and Yakima County and Corky Mattingly, its Auditor, Sam Reed, in his official capacity as Secretary of State for the State of Washington; Frank Chopp, Speaker of the Washington State House of Representatives, and Lieutenant Governor Brad Owen, President of the Washington State Senate.

Respondents.

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I, Christopher Vance, of Auburn, Washington swear:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts set forth in this affidavit.
2. I am a registered voter in King County and an elector in the State of Washington.
3. I contest the right of Christine Gregoire to be issued a certificate of election for the Office of Governor of the State of Washington.
4. In my capacity as Chairman of the Washington State Republican Party ("Republican Party"), I have coordinated the Republican Party's observation of the 2004 election and its investigation into apparent mistakes, errors, and instances of neglect and wrongful conduct by elections officials. At my direction, individuals have been

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 2

SEA 1594379v1 55441-3

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01/07/05 16:13 FAX 4256467207

Rossi for Governor

003

1 investigating and reporting to me the specific mistakes, errors, and instances of neglect and
2 wrongful conduct by elections officials that are set out in the Election Contest Petition
3 prepared in this lawsuit. In addition, I have communicated with elections officials
4 regarding items set forth in the Election Contest Petition.

5 5. Based on the reports I have received from investigators, my
6 communications with elections officials, and my review of elections records, it appears that
7 election officials have committed errors, omissions, mistakes, neglect, and other wrongful
8 acts that are the cause of this contest, including but not limited to the following:

9 a Employing procedures that resulted in the counting of votes far in
10 excess of the number of lawfully registered electors who participated in the
11 election. Specifically, based on information currently available, it appears there are
12 thousands more votes than individuals credited with voting in King County, Pierce
13 County, Snohomish County, Kitsap County, Clark County, Clallam County,
14 Douglas County, Island County, Jefferson County, Lewis County, Lincoln County,
15 Pend Oreille County, Skamania County, Stevens County, and Whatcom County.

16 b Counting provisional ballots in violation of the law by failing to first
17 investigate the provisional ballot to verify that the person was a lawfully registered
18 voter and had not already voted in the election.

19 c Counting the votes of convicted felons who have not had their civil
20 rights restored.

21 d Counting invalid votes submitted in the name of persons who died
22 before the election.

23 e Counting ballots submitted by persons other than the registered
24 voter in whose name the ballots were submitted – including at least two absentee
25 ballots wrongfully counted in Lewis County.
26
27

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 3

SEA 1594579v1 55441-3

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Rossi for Governor

004

f. Failing to ensure that military overseas and other absentee voters received absentee ballots in a timely manner.

g. Apparently violating voters' rights to equal protection of the laws by only correcting in some counties, but not others, errors made by election workers and discovered after the initial certification. The inconsistent treatment includes King County's selective correction of errors regarding ballots for which election officials had apparently made mistakes in verifying signatures and its refusal to correct additional signature verification errors when presented with declarations from voters whose ballots had been mistakenly rejected. As a result, ballots within King County were treated unequally. Also, selected ballots in King County were treated differently than ballots in other counties. Apparently based on the instructions of the Secretary of State, after King County selectively corrected certain errors the following additional counties appear to have violated voters' rights to equal protection of the laws by refusing to correct errors when presented evidence from lawfully registered voters of the respective county's mistakes:

Asotin
Clallum
Douglas
Grays Harbor
Kitsap
Lewis
Pacific
Skamania
Thurston
Yakima

Benton
Clark
Franklin
Island
Kittitas
Mason
Pend Oreille
Snohomish
Walla Walla

Chelan
Cowlitz
Grant
Jefferson
Klickitat
Okanogan
Pierce
Spokane
Whatcom

h. Apparently violating voters' rights to equal protection of the laws by allowing third parties to solicit, collect, and present for consideration revised election documents (ballot envelope signatures or registration signatures) in an effort to correct mismatched signatures and by doing so only in some counties but not in others.

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 4

SEA 1594579v1 55441-3

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Page 16 of 32

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Rossi for Governor

005

i. Apparently violating voters' rights to equal protection of the laws by failing to establish and follow uniform standards regarding the treatment of ballots containing marks in addition to a single, completely filled-in oval for one candidate ("overvotes") and containing a less than completely filled-in oval for a candidate ("undervotes"), with the result that similar ballots reviewed at different times or by different individuals were treated differently.

j. Apparently violating voters' rights to equal protection of the laws by, among other things, failing to provide consistent standards for the treatment of overvotes and undervotes and by King County's changing, several times during the course of the canvass of votes and the recounts, the standards by which election officials decided how and whether to count ballots containing overvotes or undervotes and ballots containing efforts by voters to write in the names of one of the candidates on the ballot.

k. Violating the provisions of Washington election law regarding the duplication and enhancement of ballots by marking on ballots in ways that permanently obscured the original marks by the voters making it impossible to now discern voters' intent.

6. As a result of errors, omissions, misconduct, neglect, and other wrongful acts of elections officials, it appears that they counted more invalid, illegal, and/or otherwise wrongful votes than the number of votes certified by the Secretary of State as separating the candidates. Specifically,

a. Many, potentially thousands, more votes were counted than were cast by lawfully registered voters;

b. Many provisional ballots were counted without any determination being made that the voter was entitled to vote or had not already voted;

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 5

SEA 1594579v1 55441-3

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Rossi for Governor

0006

1 c. Convicted felons who have not had their civil rights restored voted
2 and had their votes counted;

3 d. Invalid votes were counted in the name of deceased persons

4 e. Absentee ballots signed by individuals other than the registered
5 voter to whom they were sent were counted;

6 f. Invalid votes that were submitted by people who submitted more
7 than one ballot were improperly counted;

8 g. There is apparently no way to retrieve any such ballots described
9 above from the pool of ballots counted so as to determine the correct number of
10 valid votes for each candidate such that the true results of the election are uncertain
11 and unknowable;

12 h. Military overseas and other absentee voters may have been
13 disenfranchised by administrative error;

14 i. Illegitimate, invalid and/or illegal votes were cast, and in such a
15 number that if given to Ms. Gregoire, will, if taken from her, reduce the number of
16 her legal votes below the number of legal votes given to Mr. Rossi (RCW
17 29A.68.090); and

18 j. It appears that a sufficient number of illegitimate, invalid and/or
19 illegal votes has been given to Ms. Gregoire that, if taken from her, would reduce
20 the number of her legal votes below the number of votes given to Mr. Rossi, after
21 deducting therefrom the illegal votes that may be shown to have been given to him
22 (RCW 29A.68.110).

23 7. As a result of errors, omissions, misconduct, neglect and other wrongful
24 acts, it appears that elections officials failed to count more lawful votes for Candidate
25 Rossi than the number of votes separating the candidates. The number of individuals who
26 state that they voted for Mr. Rossi but their ballots were wrongfully rejected by
27

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 6

SEA 1594979v1 55441-3

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Rossi for Governor

007

1 Respondents apparently exceeds the number of votes certified by the Secretary of State as
2 separating the two candidates by more than double.

3 8. As a result of elections officials' actions and the inconsistent treatment of
4 ballots wrongly rejected by election workers, it appears that valid ballots from lawfully
5 registered voters were rejected and not counted in select counties identified above. Thus,
6 an elector had a greater chance of having his or her ballot counted in some counties than in
7 others, which constitutes an apparent violation of voters' rights to equal protection of the
8 law.

9 9. As a result of elections officials' actions, it appears confidential information
10 regarding provisional ballot voters was disclosed and third parties were allowed to collect
11 and present revised election or registration documents in some but not all counties. Thus,
12 an elector in some counties had a greater chance of having his or her ballot counted in
13 some counties than in others, which constitutes an apparent violation of voters' rights to
14 equal protection of the law.

15 10. The actions and omissions described above appear to constitute neglect of
16 duty, errors, and misconduct on the part of election officers and as a result of these errors
17 and omissions, an error is about to occur in the issuance of a certificate of election to Ms.
18 Gregoire.

19 11. In addition, as a result of the actions and omissions of elections officials,
20 Washington voters appear to have been deprived of a free and fair election:

- 21 a. Voters appear to have been deprived of the equal protection of the
22 laws guaranteed by the United States and Washington State Constitutions;
23 b. The valid votes of the certain voters apparently were either not
24 counted or diluted by illegitimate, invalid, and/or illegal votes; and
25 c. It is apparently impossible to determine which gubernatorial
26 candidate received the greatest number of legitimate votes.
27

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 7

SEA 1504570v1 55441-3

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Rossi for Governor

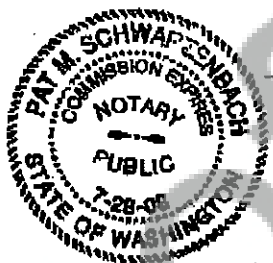
008

12. The election should be declared null and void; should be set aside; and any certification of the results of the election and any certificate of election issued as a result of the election should be void. A new election should be conducted as soon as practicable.

DATED this 7 day of January, 2005.

C. V.
Christopher Vance

SUBSCRIBED AND SWORN to before me this 7th day of January 2005.



Pat M. Schwapbach
NOTARY PUBLIC in and for the State of
Washington, residing at Belleve
My appointment expires 7-28-08

AFFIDAVIT OF CHRIS VANCE IN SUPPORT OF
ELECTION CONTEST PETITION - 8

SEA 1594379v1 53441-3

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

Timothy Borders, Thomas Canterbury, Tom
Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services;
Adams County and Nancy McBroom, its
Auditor; Asotin County and Elaine Johnston, its
Auditor; Benton County and Bobbie Gagner, its
Auditor; Chelan County and Evelyn L. Arnold,
its Auditor; Clallum County and Cathleen
McKeown, its Auditor; Clark County and Greg
Kimsey, its Auditor; Columbia County and
Sharon Richter, its Auditor; Cowlitz County and
Kristina Swanson, its Auditor and Ex-Officio
Supervisor of Elections, Douglas County and
Thad Duvall, its Auditor; , Ferry County and
Clydene Bolinger, its Auditor; Franklin County
and Zona Lenhart, its Auditor; Garfield County
and Donna Deal, its Auditor; Grant County and
Bill Varney, its Auditor; Grays Harbor County
and Vern Spatz, its Auditor; Island County and
Suzanne Sinclair, its Auditor; Jefferson County
and Donna Eldridge, its Auditor; Kitsap County
and Karen Flynn, its Auditor; Kittitas County
and Judy Pless, its Auditor; Klickitat County and
Diana Housden, its Auditor; Lewis County and
Gary Zandell, its Auditor; Lincoln County and
Shelly Johnston, its Auditor; Mason County and
Allan T. Broche, its Auditor; Okanogan County
and Peggy Robbins, its Auditor; Pacific County,

No.

NOTE FOR MOTION

NOTE FOR MOTION - I

SEA 1594635v1 55441-3

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and Pat Gardner, its Auditor; Pend Oreille
 County and Carla M. Heckford, its Auditor;
 Pierce County and Pat McCarthy, its Auditor;
 San Juan County and Si A. Stephens, its Auditor;
 Skagit County and Norma Hickock-Brummett,
 its Auditor; Skamania County and Mike
 Garvison, its Auditor; Snohomish County and
 Bob Terwilliger, its Auditor; Spokane County
 and Vicky Dalton, its Auditor; Stevens County
 and Tim Gray, its Auditor; Thurston County and
 Kim Wyman, its Auditor; Wahkiakum County
 and Diane L. Tischer, its Auditor; Walla Walla
 County and Karen Martin, its Auditor; Whatcom
 County and Shirley Forslof, its Auditor;
 Whitman County and Eunice Coker, its Auditor,
 and Yakima County and Corky Mattingly, its
 Auditor, Sam Reed, in his official capacity as
 Secretary of State for the State of Washington,
 Frank Chopp, Speaker of the Washington State
 House of Representatives, and Lieutenant
 Governor Brad Owen, President of the
 Washington State Senate,

Respondents.

To: All Respondents and their counsel.¹

NOTE FOR LAW AND MOTION CALENDAR

Please note that this matter will be heard on the regularly scheduled Law and Motion
 Calendar on the 14th day of January, 2005, at 9:30 a.m.

Nature of Hearing: Petitioners' Motion for Expedited Discovery.

DATED this 7th day of January, 2005.

Davis Wright Tremaine LLP
 Attorneys for Petitioners

By Robert J. Maguire
 Harry J.F. Korrell/WSBA #23173
 Robert J. Maguire, WSBA #29909

¹ None of the Respondents has appeared in this matter yet. This note for motion is being
 served on them along with the Summons and Petition for Election Contest.

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

Timothy Borders, Thomas Canterbury, Tom
Huff, Margie Ferris, Paul Elvig, Edward
Monaghan, and Christopher Vance, Washington
residents and electors, and the Rossi for
Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of
Records, Elections and Licensing Services;
Adams County and Nancy McBroom, its
Auditor; Asotin County and Elaine Johnston, its
Auditor; Benton County and Bobbie Gagner, its
Auditor; Chelan County and Evelyn L. Arnold,
its Auditor; Clallum County and Cathleen
McKeown, its Auditor; Clark County and Greg
Kimsey, its Auditor; Columbia County and
Sharon Richter, its Auditor; Cowlitz County and
Kristina Swanson, its Auditor and Ex-Officio
Supervisor of Elections, Douglas County and
Thad Duvall, its Auditor; , Ferry County and
Clydene Bolinger, its Auditor; Franklin County
and Zona Lenhart, its Auditor; Garfield County
and Donna Deal, its Auditor; Grant County and
Bill Varney, its Auditor; Grays Harbor County
and Vern Spatz, its Auditor; Island County and
Suzanne Sinclair, its Auditor; Jefferson County
and Donna Eldridge, its Auditor; Kitsap County
and Karen Flynn, its Auditor; Kittitas County
and Judy Pless, its Auditor; Klickitat County and
Diana Housden, its Auditor; Lewis County and
Gary Zandell, its Auditor; Lincoln County and
Shelly Johnston, its Auditor; Mason County and
Allan T. Brotche, its Auditor; Okanogan County
and Peggy Robbins, its Auditor; Pacific County,

No.

**PETITIONERS' MOTION FOR
EXPEDITED DISCOVERY**

**PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 1**

SEA 1594605v1 55441-3

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and Pat Gardner, its Auditor; Pend Oreille
County and Carla M. Heckford, its Auditor;
Pierce County and Pat McCarthy, its Auditor;
San Juan County and Si A. Stephens, its Auditor;
Skagit County and Norma Hickock-Brummett,
its Auditor; Skamania County and Mike
Garvison, its Auditor; Snohomish County and
Bob Terwilliger, its Auditor; Spokane County
and Vicky Dalton, its Auditor; Stevens County
and Tim Gray, its Auditor; Thurston County and
Kim Wyman, its Auditor; Wahkiakum County
and Diane L. Tischer, its Auditor; Walla Walla
County and Karen Martin, its Auditor; Whatcom
County and Shirley Forslof, its Auditor;
Whitman County and Eunice Coker, its Auditor,
and Yakima County and Corky Mattingly, its
Auditor, Sam Reed, in his official capacity as
Secretary of State for the State of Washington;
Frank Chopp, Speaker of the Washington State
House of Representatives, and Lieutenant
Governor Brad Owen, President of the
Washington State Senate,

Respondents.

I. INTRODUCTION AND RELIEF REQUESTED

This is an action contesting the 2004 election for the Office of Governor.

Petitioners anticipate that evidence obtained in discovery, in addition to Petitioners' affidavits, will demonstrate that the number of illegal votes counted, and the number of valid votes improperly rejected in this election, are so great as to render the true result of the election uncertain. So long as the uncertainty remains, a cloud will exist over the legitimacy of any administration taking office. Confidence in the results of the election must be restored quickly. The people of the State of Washington are entitled to the prompt resolution of the issues clouding the election and an expeditious development of the facts and evidence that will determine whether a new election is necessary.

As it currently stands, the legislature is scheduled to issue a certificate of election on Tuesday, January 11, 2005, with inauguration scheduled for Wednesday, January 12.

**PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 2**

SEA-1594605v1 55441-3

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1 Yet serious questions exist as to the accuracy of the vote totals certified by the Secretary of
2 State on December 30, 2004. Those issues include, among others, the following:

- 3 • Thousands more votes have been counted than there are voters for whom
4 counties have records of having voted in the election. The discrepancy suggests
5 that the excess votes are invalid or illegal.
- 6 • King County's Elections Superintendent has acknowledged that "[a]n
7 unknown number of provisional voters, some of whom may not even have been
8 registered to vote, improperly put their ballots directly into vote-counting machines
9 at polling places." See "Election Scrutiny Reveals Provisional-Vote Flaws,"
10 Seattle Times, January 5, 2005. These provisional ballots – which were not
11 checked to ensure that they were submitted by registered voters and for which there
12 was apparently no investigation to determine whether the person had already voted
13 by absentee or other means – have apparently been cast into the sea of counted
14 ballots and cannot now be retrieved.
- 15 • Numerous individuals ineligible to vote, such as convicted felons whose
16 civil rights had not been restored, deceased individuals, and individuals with
17 multiple registrations, appear to have been credited with having voted in the
18 election.
- 19 • Military overseas and other absentee voters may not have received or been
20 sent their absentee ballots in a timely manner and could have been disenfranchised
21 by the neglect, mistake, or error of election officials.
- 22 • In at least one county, election workers "enhanced" ballots by obscuring
23 original voter marks in violation of the Washington Administrative Code and likely
24 rendering it impossible to determine now the voter's original intent.
- 25 • In violation of the Equal Protection Clause, King County used inconsistent
26 and changing standards for handling overvotes – ballots on which a voter appeared
27

PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 3

SEA 1594606v1 55441-3

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1 to have made multiple marks – during its counting and recounting of the ballots.

2 Ballots were treated differently depending on when and where they were reviewed.

3 • When presented with sworn statements by hundreds of voters whose ballots
4 had been improperly rejected, several counties abused their discretion and violated
5 the Equal Protection Clause by failing to recanvass those ballots and correct those
6 errors during the manual recount.

7 • Serious questions exist as to the security of ballots during the initial count
8 and two recounts which, when coupled with the existence of thousands more votes
9 counted than identifiable individuals credited with voting, raises the specter of
10 manipulation and illegitimate ballots.

11 These serious questions go to the fundamental legitimacy of the election and
12 require immediate investigation and resolution. Accordingly, Petitioners seek expedited
13 discovery in this matter including an order:

14 1. Compelling responses to its requests for production of documents and its
15 interrogatories within 10 calendar days of service of such requests and interrogatories; and

16 2. Granting them leave to take depositions in this matter immediately on two
17 days' notice to the deponent.

18 II. FACTUAL BACKGROUND

19 A. Discovery Requested

20 Petitioners will be serving interrogatories and requests for production seeking
21 information about how ballots were verified, validated, and counted in the November 2004
22 general election.¹ The requests will cover each of the specific errors, omissions, and

23
24 ¹ The Washington State Republican Party, through counsel for Petitioners in this case, has
25 submitted a request under the Public Disclosure Act to King County that covers some of
26 the documents described here. The County has promised to provide many documents
27 responsive to that request by 3:00 p.m. on January 7, 2005. Depending on the documents
produced, some of the anticipated discovery requests in this case may not be necessary.
For this reason, Petitioners will finalize the particular discovery requests after receiving the
response to the Public Disclosure Act request. Petitioners expect to do so, and to serve the
PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 4

1 discrepancies alleged in the Election Contest Petition, including the process in each county
2 of reconciling the number of votes cast with the number of individual voters credited with
3 voting; whether or to what extent provisional and absentee ballots were counted before
4 being verified and whether they can be identified after they were counted; whether or to
5 what extent ballots submitted by felons, dead persons, or those who voted more than once
6 were counted; the number of unverified ballots counted and the manner in which that
7 number was calculated; the manner of "enhancement" of ballots by election workers; the
8 manner of handling overvotes and undervotes; the failure to recanvass ballots of select
9 voters whose ballots had been improperly rejected while recanvassing others; and the
10 security of ballots during the initial count and two recounts. Petitioners also seek to
11 depose certain County and State officials and their employees who were responsible for the
12 administration of the election to develop evidence regarding the subjects covered in their
13 discovery requests. Information regarding these subjects is central to establishing the exact
14 nature and extent of the unlawful votes that were allowed to be counted and the lawful
15 votes that were improperly rejected. The ascertainment of that number will likely
16 determine whether a re-vote is necessary: if the number exceeds the margin of victory,
17 then the election is void. See *Foulkes v. Hays*, 85 Wn.2d 629, 633 (1975).

18 B. Procedural Context

19 After an election contest has been commenced, the clerk of the court is required to
20 issue an order setting a hearing to occur "not less than ten nor more than twenty days from
21 the date of the notice [of hearing], to hear and determine such contested election." RCW
22 29A.68.040. Although the statute does not require the clerk to issue the order setting the

23
24 requests, by Monday, January 10. If the Court grants this motion, responses will be due on
25 Thursday, January 20. Petitioners will submit a bench copy of their discovery requests to
26 the Court when they are served on Respondents so the Court can review them before the
27 hearing on this motion. However, any objections Respondents may raise to specific
requests has no bearing on the overall merits of this motion.

PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 5

SEA 1594605v1 55441-3

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1 hearing within a specified period of time, "the spirit of the law dictates that contests
2 instituted thereunder *shall be promptly heard and determined.*" *Thomas v. Van Zandt*,
3 56 Wash. 595, 599, 601 (1910) (interpreting a predecessor statute that was substantively
4 identical in relevant respects) (emphasis added). It is Petitioners' hope that the Court will
5 issue the order setting a hearing to determine this election contest as quickly as possible,
6 and that the hearing will take place within 20 days of the filing of their petition. To be
7 meaningful, all discovery in this case needs to be completed before the hearing.

8 III. AUTHORITY

9 The Court has wide discretion to expedite discovery. Under CR 34(b), a "court
10 may allow a shorter . . . time" for a party to respond to requests for production than the
11 30 days (or 40 days from the date of the complaint) otherwise provided.² Under CR 30(a),
12 a party may note depositions to take place within 30 days from the date of the complaint
13 upon "[l]eave of court, with or without notice." In addition, the general rule requiring a
14 party to give five days' notice of a deposition is subject to the provision that "the court
15 may for cause shown enlarge or shorten the time for taking the deposition." CR 30(b)(3).
16 Finally, a trial court has broad discretion under CR 26 to manage the discovery process.
17 *See Eagle Group, Inc. v. Pullen*, 114 Wn. App. 409, 416 (2002).

18 Federal courts interpreting substantially the same provisions grant leave for
19 expedited discovery upon a showing of good cause. *See Yokohama Tire Corp. v. Dealers*
20 *Tire Supply, Inc.*, 202 F.R.D. 612 (D. Ariz. 2001); *Semitool, Inc. v. Tokyo Electron*
21 *America, Inc.*, 208 F.R.D. 273 (N.D. Cal. 2002).³ "Good cause may be found where the

22
23 ² As a suit of a civil nature in the superior court, the Civil Rules should govern the
24 procedure in this matter. CR 1.

25 ³ Petitioners have not found Washington published cases addressing the standard for
26 expediting discovery. In interpreting the Civil Rules, however, Washington courts are
27 guided by federal cases interpreting substantially similar federal rules. *See Casper v. Esteb*
Enters., 119 Wn. App. 759, 767 (2004); *Rinke v. Johns-Marville Corp.*, 47 Wn. App. 222,
225 (1982); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 218 (1992).

1 need for expedited discovery, in consideration of the administration of justice, outweighs
2 the prejudice to the responding party." *Semitoal*, 273 F.R.D. at 276.

3 The need for expedited discovery in this case is compelling. The People of the
4 State of Washington deserve a fair election, and they deserve to have the true results of
5 such an election determined in a timely matter. Washington's November 2004 election
6 was not conducted in a fair manner: the results include votes that cannot be ascribed to any
7 lawfully registered voters and the votes of unregistered and ineligible voters were
8 apparently counted while certain legitimate votes were not. Thus, the voters of
9 Washington are lawfully entitled to a re-vote, and Petitioners expect to establish this at the
10 hearing to be scheduled under RCW 29.68.040.

11 For the Court to fully evaluate and remedy the serious errors and abuses of process
12 that have transpired in this election, Petitioners need the discovery described before the
13 hearing. Under normal discovery rules, there would be no way to conduct this discovery
14 before the hearing unless it was scheduled at least six weeks after the filing of the petition.
15 Then, assuming the Court were to agree that a re-vote is required under the law, another
16 delay would occur. The voters are entitled to a fair and final resolution of this important
17 issue much sooner, and the integrity of Washington's democratic process demands it.

18 Furthermore, expedited discovery will not prejudice Respondents. They are well
19 aware of the issues raised in this petition and can hardly claim that the petition or the
20 discovery requests come as surprise. Indeed, some counties and the State have been
21 actively researching and assessing the very issues Petitioners raise here over the last
22 several weeks, and Petitioners simply seek access to the information Respondents have
23 developed. Even if certain counties were to object that they cannot respond to certain
24 requests in time, this does not amount to prejudice; nor would it affect the need for
25 expedited discovery in this matter.

26
27
PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 7

SEA 1594605v1 55441-3

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IV. CONCLUSION

Given the importance not only of the issues themselves but also of their quick resolution, the Court should exercise its broad discretion to allow the expedited discovery Petitioners request here.

DATED this 7th day of January, 2005.

Davis Wright Tremaine LLP
Attorneys for Petitioners

By

Robert J. Maguire
Harry J. F. Korrell

WSBA #23173

Robert J. Maguire

WSBA #29909

PETITIONERS' MOTION FOR EXPEDITED
DISCOVERY - 8

SEA 1594605v1 55441-3

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