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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

PETITIONERS' MOTION TO COMPEL

Petitioners,

v.

King County and Dean Logan, its Director of Records, Elections and Licensing Services, et al.,

Respondents.

and

Washington State Democratic Central Committee,

Intervenor-Respondent,

and

Libertarian Party of Washington State et al.,

Intervenor-Respondents.

I. RELIEF REQUESTED

Petitioners respectfully request that the Court issue an order to compel King County to produce voting records. Despite numerous written and oral requests from Petitioners, King County has failed to produce many key voting records at issue in this election contest, including poll book pages, absentee envelopes, provisional ballot

1 envelopes, and absentee ballot requests. Although reluctant to turn to the Court for
2 resolution of a discovery dispute, Petitioners can no longer wait for these documents.

3 **II. STATEMENT OF ISSUES**

4 Whether King County has fully complied with Petitioner's subpoenas duces tecum
5 dated April 29, 2005, and whether such compliance should now be compelled by the
6 Court.

7 **III. STATEMENT OF RELEVANT FACTS**

8 On April 29, 2005, Petitioners served a subpoena duces tecum on the Records
9 Custodian of King County Records, Elections and Licensing Services ("King County
10 REALS"). Attachment A to the April 29, 2005 subpoena requested that the Records
11 Custodian of King County REALS provide the following documents with respect to the
12 individuals listed in Exhibit 1 to the subpoena:

- 13 1. All poll book pages from the 2004 General Election containing the
14 names of those individuals listed on the attached Exhibit 1, whether
15 or not a signature appears next to the respective individual's name.
16 2. All absentee ballot envelopes from the 2004 General Election
17 returned by those individuals listed on the attached Exhibit 1.
18 3. All provisional ballot envelopes from the 2004 General Election
19 submitted by those individuals listed on the attached Exhibit 1.

20 King County REALS was required to produce these documents by May 6 2005.
21 They have failed to produce the requested documents in a timely manner, despite
22 numerous requests from Petitioners that they do so.

23 At the request of the representative for King County REALS, Petitioners re-served
24 the April 29, 2005 subpoena on May 3, 2005, yet the County's responses remain
25 outstanding.
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IV. ANALYSIS

The county has failed to produce any of the requested records, including the poll book pages, absentee ballot envelopes, and provisional ballot envelopes in a timely manner, and its response is now more than a week overdue.

In general, decisions on discovery requests are within the trial court's discretion. *See Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772, 777, 819 P.2d 370 (1991). Trial in this election contest is scheduled to begin on May 23, 2005, and Petitioners can no longer wait for King County REALS to comply with its obligations under the April 29, 2005 subpoena duces tecum.

Petitioners therefore respectfully ask the court to grant this motion to compel production of documents pursuant to Petitioner's April 29, 2005 subpoena duces tecum to King County REALS.

V. RULE 26 CERTIFICATION

Under Rule 26(i), a court may not entertain any motion or objection with respect to Rules 26 through 37 unless "counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone."

Petitioners certify through this motion that they have met the Rule 26(i) certification requirements. In addition to numerous other requests to representatives of King County REALS to fulfill its obligations under the April 29, 2005, counsel for Petitioners, Rob Maguire, most recently met and conferred with these representatives on May 16, 2005 with respect to outstanding discovery requests. Petitioners offered to provide King County REALS people to assist with gathering and copying the responsive documents. This offer was declined. Representatives for King County REALS informed Petitioners that King County REALS was unable to provide a date by which they would respond to Petitioners' request. With little time before trial, and in the absence of any

