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SIRI A. WOODS
CHELAN COUNTY CLERK

THE HONORABLE T.W. SMALL

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR CHELAN COUNTY

TIMOTHY BORDERS, ET AL., Petitioners, v. KING COUNTY, ET AL., Respondents, and WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, Applicant Intervenor-Respondent	NO. 05-2-00027-3 DECLARATION OF DAVID T. MCDONALD IN SUPPORT OF MOTION FOR INTERVENTION

I, David T. McDonald, hereby declare as follows:

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

1. I am over the age of 18, am competent to be a witness herein, and make this declaration based on my own personal knowledge.

2. I am an elected Member of the Democratic National Committee representing the Washington State Democratic Party and the Parliamentarian of the Washington State Democratic Party. As such under the rules of the Party, I am an officer of the Party.

3. I was appointed Recount Director for the Party by Paul Berendt, Chair of the Washington State Democratic Party.

4. On November 17, 2004, the Secretary of State Sam Reed ("Secretary") certified the first count of the 2004 election for governor. The results of the initial count showed that republican candidate Dino Rossi had a narrow lead, within the margin that required a mandatory recount pursuant to RCW 29A.64.021(1).

5. At the conclusion of the mandatory recount, on November 30, 2004, the Secretary certified an amended abstract indicating that Dino Rossi had a lead of only 42 votes.

6. On December 3, 2005, on behalf of the Washington State Democratic Central Committee ("WSDCC") I requested a manual recount, and delivered to the Secretary a cashier's check in the amount of $730,000 as a deposit. Attached hereto as Exhibit A is a true and correct copy of the letter requesting the manual recount and enclosing the $730,000 deposit check.

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7. The recount process was observed by representatives of both the Democratic and Republican parties. There were hundreds of observers for both parties that participated as observers throughout the State.

8. At the conclusion of the manual recount, Democratic candidate Christine Gregoire was declared the winner of the 2004 election for Washington governor, by a total of 129 votes. A true and correct copy of the final result of the manual recount, as reported by the Secretary on its website is attached to this declaration as Exhibit B.

9. On December 30, 2004, the Secretary certified the results of the manual recount, declaring Ms. Gregoire to be Washington's governor-elect. A true and correct copy of the Secretary's Canvass of the Returns of the Requested Hand Recount is attached to this declaration as Exhibit C.

10. Because the manual recount changed the results of the race, on December 30, 2004 the WSDCC requested that the Secretary immediately return the $730,000 deposit pursuant to RCW 29A.64.081. A true and correct copy of my December 30, 2004 letter to the Secretary is attached to this declaration as Exhibit D.

11. The Secretary has refused that request and has continued to refuse to return the deposit pending this and any other election contest. A true and correct copy of a January 5, 2005 letter from Thomas Ahearne, counsel for the Secretary, to counsel for the WSDCC refusing the request to return the deposit check is attached to this declaration as Exhibit E.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, this 12th day of January, 2005.

David T. McDonald

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EXHIBIT A

Washington State Democrats

Paul Berendt, Chair

December 3, 2004

Sam Reed
Secretary of State
Office of the Secretary of State
520 Union Avenue
P.O. Box 40220
Olympia, WA 98504-0220

Re: Statewide Manual Recount of Ballots in Governors Race

Dear Secretary Reed:

I am an elected Member of the Democratic National Committee representing the Washington State Democratic Party and the Parliamentarian of the Washington State Democratic Party. As such under the rules of the Party, I am an officer of the Party. I am a duly registered voter of the State of Washington residing in King County. To avoid any confusion, I have enclosed a letter from Paul Berendt, confirming my authority and endorsing this request. Mr. Berendt is the duly elected Chair of the State Committee of the Democratic Party, the Washington State Democratic Central Committee, and the Washington State Democratic Party.

On behalf of the Washington State Democratic Party and related entities and all voters everywhere who cherish democracy, fairness, and open government, I hereby request that the State of Washington carry out a manual recount of all ballots submitted to State or County election officials by any elector of this State at any time in connection with the 2004 election of the next Governor of the State of Washington.

Pursuant to RCW 29A.64.030, and in reliance upon the number of ballots which you and the respective auditors have most recently certified as the number of ballots cast in this race, I enclose a certified check made out to the State of Washington in the amount of $730,000. This should be more than sufficient to cover recounting of all ballots previously counted as well as all ballots previously excluded for some reason.

Please acknowledge timely receipt of this request and advise me immediately of any questions you have with regard to this request or any information you need to direct a statewide manual recount of ballots in the Governor's race.

Yours truly,

David T. McDonald,
Recount Director
Washington State Democratic Party

cc: Paul Berendt
County Auditors (without enclosures)

EXHIBIT B

Washington Secretary of State

GOVERNOR

	Ballot Name	Party	Votes	Percentage	Gain/Loss
	Christine Gregoire	Democratic	1,373,361	48.8730%	**+919**
	Dino Rossi	Republican	1,373,232	48.8685%	**+748**
	Ruth Bennett	Libertarian	63,465	2.2585%	**+50**

3 Candidate(s)

You can find this information at: http://vote.wa.gov/general/recount.aspx?

EXHIBIT C

SECRETARY of STATE

Sam Reed

ELECTIONS DIVISION
Voter Registration Services
1007 S. Washington Street
PO Box 40237
Olympia, WA 98504-0237
Tel 360.586.0480
Fax 360.664.2971
www.vote.wa.gov

**CANVASS OF THE RETURNS
OF THE REQUESTED HAND RECOUNT
OF THE GENERAL ELECTION
HELD ON NOVEMBER 2, 2004
FOR THE OFFICE OF GOVERNOR**

I, Sam Reed, pursuant to RCW 29A.64.061, do hereby file this amended abstract of the results for the office of Governor at the November 2, 2004 general election. This amended abstract of votes is the result of a requested statewide hand recount of the ballots cast for that office. Attached is a summary of the results as certified and transmitted by the county canvassing boards for the thirty-nine counties of the State of Washington pursuant to RCW 29A.64.061 and RCW 29A.64.070.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the State of Washington this 30th day of December, 2004.

SAM REED
Secretary of State

EXHIBIT D

Washington State Democrats

Paul Berendt, Chair

December 30, 2004

VIA EMAIL TRANSMISSION & U.S. MAIL

The Honorable Sam S. Reed
Secretary of State
State of Washington
Office of the Secretary of State
Legislative Building
P.O. Box 40220
Olympia, WA 98504-0220

Re: Refund of WSDCC Deposit

Dear Secretary Reed:

On December 3, 2004, on behalf of the Washington State Democratic Central Committee, I delivered to you a cashier's check in the amount of $730,000 as a deposit, pursuant to RCW 29A.64.030, in connection with my request for a statewide manual recount of the 2004 Governor's race.

Today you have completed your canvass of the returns of that manual recount as certified by the 39 counties. Pursuant to RCW 29A.64.061 you have amended the official abstracts of this election, thereby superseding and changing the results of the election as a result of the manual recount requested by the Washington State Democratic Central Committee. As a result, '[n]o charges my be deducted by the canvassing board from the deposit for a recount" because "the recount change[d] the result of the . . . election for which the recount was ordered." RCW 29A.64.081. There is now no lawful basis for charging any costs of the recount against the Democratic Party's deposit and no lawful basis for retaining possession of the party's check.

I would like to return the deposit to the Democratic Party's bank no later than tomorrow morning. Please advise me of a time this afternoon at which I can pick up the refund of the Party's deposit.

Thank you again for your cooperation and the long hours devoted by your office toward ensuring that this contentious recount was the most accurate in Washington State history.

Yours truly,

David T. McDonald
Recount Director
Washington State Democratic Central Committee

cc: Paul Berendt
Nick Handy

EXHIBIT E

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW

Mr. Ahearne's Direct Dial:
(206) 447-8934

Mr. Ahearne's Direct Fax:
(206) 749-1902

E-Mail Address:
AHEARNE@FOSTER.COM

January 5, 2005

VIA TELEFAX – (206) 583-8741
Mr. Kevin J. Hamilton
Perkins Coie LLP
1201 Third Avenue, 40th Floor
Seattle, WA 98101-3099

Re: Your Client's Recount Security Deposit

Dear Mr. Hamilton:

This concerns your client's request for a return of the $730,000 deposit that the Washington State Democratic Central Committee and its affiliates ("Democratic Party") submitted "as security for payment of any costs of conducting the recount." RCW 29A.64.030.

As you know, the statutory provision governing the treatment of that security deposit states in full as follows:

> The canvassing board shall determine the expenses for conducting a recount of votes. The cost of the recount shall be deducted from the amount deposited by the applicant for the recount at the time of filing the request for the recount, and the balance shall be returned to the applicant. If the costs of the recount exceed the deposit, the applicant shall pay the difference. No charges may be deducted by the canvassing board from the deposit for a recount if the recount changes the result of the nomination or election for which the recount was ordered.

RCW 29A.64.081.

The deposit at issue was made with respect to the November 2, 2004 election for Governor. The result of that election was originally in Mr. Rossi's favor.

The hand recount may or may not change the result of that election, depending upon how the election contest actions are resolved. For example, the *Coday* election contest submission filed with the Supreme Court requests that Mr. Rossi be inaugurated "as the next Governor of Washington State as he was the only candidate for the office of Governor listed on the 2004

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Alaska

PORTLAND
Oregon

SEATTLE
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SPOKANE
Washington

Washington State ballot set who was duly elected by constitutional means". The *Stevens* election contest submission argues with respect to the Governor's election recounts that "error must be assumed as a certainty". And since the cutoff date for election contest actions is still weeks away, there will likely be additional election contest actions and allegations filed as well.

The Secretary of State's Office cannot be sure at this point how the election contest proceedings brought with respect to the 2004 Governor's election will be resolved. We can, however, be sure that until those election contest proceedings are resolved, no one will know if the hand recount did in fact change the result of the November 2, 2004 Governor's election from Mr. Rossi to Ms. Gregoire.

In short, your client provided the deposit at issue as security for reimbursing the hand recount costs incurred by the taxpayers. RCW 29A.64.030 (deposit submitted "as security for payment of any costs of conducting the recount"). But until the election contest proceedings are resolved, no one can be certain of whether or not the recount in fact changed the result of the November 2, 2004 Governor's election from Mr. Rossi to Ms. Gregoire. We therefore believe that at this time your client's demand for a return of the security deposit is premature under the previously quoted language of RCW 29A.64.081.[1]

Sincerely,

FOSTER PEPPER & SHEFELMAN, PLLC

By: Thomas F. Ahearne
Special Assistant Attorneys General

TFA:do

[1] Since you have mentioned demanding interest on that security deposit if it is not immediately returned, we also note that no such interest is allowable from public funds since RCW 29A.64.081 does not make any provision for payment of any interest on that security deposit. See, e.g., *Our Lady of Lourdes Hospital v. Franklin County*, 120 Wn.2d 439, 455-56, 842 P.2d 959 (1993) ("The general rule is that as a matter of sovereign immunity, the state cannot, without its consent, be held to interest on its debts. ... The [plaintiff] Hospital points to no statute or contract authorizing such interest, nor has the Hospital attempted to show implied consent to liability for such interest."). Similarly here, there is no statute, contract, or consent of any kind with respect to the State (or its taxpayers) waiving such immunity in this matter.