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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 WILLIAM C. RAVA IN SUPPORT OF MOTION FOR INTERVENTION

I, William C. Rava, hereby declare as follows:

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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 one of the attorneys of record for the Applicant Intervenor-Respondent Washington State Democratic Central Committee ("WSDCC"). I have participated in the legal proceedings on behalf of the WSDCC related to the election for 2004 governor.

3. Four other lawsuits have been filed during the course of the 2004 Washington Governor's race by either the Washington State Republican Party or the WSDCC. Intervention by the opposing party has been granted in each of those four lawsuits.

4. During the manual recount, Dino Rossi and the Washington State Republican Party, acting as Intervenors, opposed a Petition filed by Washington electors and the WSDCC filed in the Supreme Court. A true and correct copy of relevant excerpts of that Opposition is attached to this declaration as Exhibit A.

5. Attached to this declaration as Exhibit B is a November 25, 2004 news article, wherein Petitioner Christopher Vance calls on Ms. Gregoire to concede based on the results of the machine recount.

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

EXECUTED at Seattle, WA, this 10th day of January, 2005.

William C. Rava

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EXHIBIT A

NO. 76321 - 6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID McDONALD, ET AL.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, ET AL.,

Respondents,

and

GOVERNOR-ELECT DINO ROSSI, a citizen and elector of Washington, and the WASHINGTON STATE REPUBLICAN PARTY, an unincorporated association,

Applicants-Intervenors.

INTERVENORS' OPPOSITION TO PETITION BY ELECTORS AND PETITION FOR WRIT OF MANDAMUS AND OTHER RELIEF and MOTION IN SUPPORT OF EMERGENCY PARTIAL RELIEF

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If, as part of a recount, counties had to revisit even a fraction of the decisions regarding the validity of nearly 2 million ballots, along with recounting the ballots by hand, the recanvass (for it would no longer be a "recount") could drag on for weeks or months. King County has already announced that just to retabulate the already twice-counted ballots by hand will take it until December 22. No one knows exactly how long it would take to do what Petitioners want (revisiting all the decisions to reject ballots as invalid or illegal), much less how long it would take to revisit all the validity determinations, which would be required for a fair review of those decisions.

ARGUMENT AND AUTHORITY

Petitioners seek to set a dangerous precedent in Washington by asking the Judicial Branch to change the rules for an election after it has occurred: they want to change the recount rules halfway through the process. In the past, this Court has prudently resisted interjecting itself into the electoral process. *See Washington State Labor Council v. Reed*, 149 Wn.2d 48, 55 (2003) (the Court is "generally reluctant to interfere in the electoral process . . ."). "[E]lection contests are governed by several general principles [and] [c]hief among them is the principle, long followed by this Court, that the judiciary 'should exercise restraint in interfering

with the elective process which is reserved to the people..." *Dumas v. Gagner*, 137 Wn.2d 268, 283 (1999).

I. A Writ of Mandamus Cannot Issue Because the Secretary of State has Discretion to Create Guidelines Regarding Election Procedures in Accordance with Election Law.

A writ of mandamus is extraordinary relief. *See Staples v. Benton County*, 151 Wn.2d 460, 464 (2004). Mandamus may not be used "to compel a general course of official conduct" and "may not be used to compel the performance of acts or duties which involve discretion on the part of the public official." *Walker v. Munro*, 124 Wn.2d 402, 408-10 (1994). This Court has long refrained from issuing a writ of mandamus that would "interfer[e] with the executive branch of the state government in a matter involving the exercise of discretion of one of the high officers of the state." *State v. Schively*, 63 Wn. 103, 109-10 (1911). "Before the judiciary will interfere in such a case it must clearly appear that such officer has so far departed from the line of his duty under the law that it can be said he has in fact so far abused such discretion that he has neglected or refused to exercise any discretion." *Id.*; *accord State ex rel. Craven v. City of Tacoma*, 63 Wn.2d 23, 26-28 (1963) ("We agree with respondents that mandamus does not lie to compel the performance of discretionary acts unless the discretion so exercised has been arbitrary and capricious.").

EXHIBIT B

Westlaw.

factiva

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Seattle Post-Intelligencer
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Thursday, November 25, 2004

News

RECOUNT GIVES ROSSI A 42-VOTE VICTORY ; BUT GREGOIRE VOWS TO PRESS FOR MANUAL TALLY

CHRIS McGANN AND ANGELA GALLOWAY P-I reporters

After hundreds of unreadable ballots were enhanced, torn ones replaced and nearly 3 million others recounted, Republican Dino Rossi again bested Democrat Christine Gregoire in the race for governor - by 42 votes. Rossi declared victory yesterday after winning two statewide counts in the closest gubernatorial race in Washington history and instructed his transition team to continue moving forward.

Gregoire, however, refused to give up and said she will demand a manual recount.

"The race continues," Gregoire said at a news conference. "It's a tied race."

She said she hasn't decided whether she and the Democratic Party would call for a statewide hand recount or choose only select counties. A statewide recount would cost about $700,000, or 25 cents a vote for targeted districts such as King County, where Gregoire won 58 percent of the vote.

"Some folks have suggested that we ought to flip a coin or stage a duel with (former state) Senator Rossi," Gregoire said. "My personal preference is we count every vote."

Rossi said that despite his opponent's comments about a hand recount, he hoped the state's former attorney general would concede.(See Correction Above.)

"This process has lasted a lot longer than anyone thought it would, but I'm grateful that the people of Washington have placed their trust in me," Rossi said in a statement. "I am focusing on preparing for a new administration in Olympia and doing what I promised to do throughout the campaign: Get people back to work and turn our economy around."

State Republican Party Chairman Chris Vance was livid about Gregoire's refusal to give up the fight.

"I hope that Christine Gregoire will take some time over this Thanksgiving holiday

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and reconsider her decision and concede this election rather than drag this state into political chaos," Vance said. "It's the most contentious thing you could do."

Vance said the first recount was the most accurate that there will be.

"They need to calm down and think about where they are taking this state," Vance said.

The telegenic and polished Rossi was the strongest, most viable candidate Republicans had put forward for governor in many years. He trailed Gregoire in most polls but started gaining toward the end after a blitz of highly effective television ads.

For her part, Gregoire has been criticized for running too cautious a campaign to succeed fellow Democrat Gary Locke. Locke opted not to run for a third term as governor.

Yesterday, Gregoire said that by calling for a recount she was ensuring the integrity of elections in the state. She also said that if a second recount showed Rossi as the winner, she would work with him to unite a divided electorate.

"I will honor forever the sacred right of the citizens of the state of Washington that cast their ballot and every single person to have that ballot be valued and counted. They deserve it," Gregoire said.

Why not demand a statewide recount then?

Gregoire replied: "No definitive decision has been made."

If a partial hand recount were enough to change the apparent outcome of the first machine recount, it would trigger an automatic statewide hand recount, the balance of which would be paid for by the state.

Democrats had hoped that when the state's largest county finished its machine recount yesterday, they would have enough votes to overcome the 261-vote lead Rossi held after the first statewide tally.

Gregoire picked up an additional 245 votes in King County, but Rossi picked up votes in other counties.

Gregoire also called on Secretary of State Sam Reed to "investigate" allegations that there were a number of "anomalies and irregularities" in some counties' tallies. For example, she said thousands of King County ballots "were simply tossed out."

However, the secretary of state has limited jurisdiction there. While Reed oversees election policy, he does not have jurisdiction to second-guess specific decisions of county canvassing boards, which are sovereign, said spokeswoman Trova Hutchins.

Reed said he would certify the results of the recount and declare Rossi the governor-elect Tuesday. He said that none of the issues raised by the Gregoire campaign would lead him to postpone certification.

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Reed said that the margin of victory is slimmer than the margins of error for counting nearly 3 million votes. "It ends up being around this number that it is almost like drawing a lot to decide who is governor."

Following certification, the parties and candidates will have three days to demand and pay for the full or partial hand recount.

When counties certified results Nov. 17, Rossi's lead was small enough to trigger an automatic machine recount but not so small as to trigger a hand recount.

Under state law, a margin within 2,000 votes and one-half of 1 percent mandates a machine recount and a margin within 150 votes and one-quarter of 1 percent triggers a manual, or hand, recount. That rule does not apply to the recount.

"If the machines had done it right in the first place, we'd be in a hand count right now," Gregoire said. Gregoire said that only a hand recount would offer the certainty to "allow the next governor to govern effectively.

"It may take some more time," she said. "But in the end it's worth a two-week delay to have certainty."

Former Democratic Gov. Booth Gardner yesterday supported Gregoire's decision. Before the recount was finished yesterday, he said, Gardner felt Gregoire should concede unless she trailed by fewer than 100 votes. But he didn't think that would happen, he said.

"Christine Gregoire or Dino Rossi would make outstanding governors," Gardner said. But with a margin this thin, Gardner said, a manual recount is appropriate.

Gregoire's campaign is out of money and won't be paying for any recount; the state Democratic Party will. State party Chairman Paul Berendt said he expects the Democratic National Committee to help as well.

As to the GOP's contention that Democrats should accept defeat, Berendt said: "The Republicans didn't want us to do this recount, and they certainly don't want us to do another recount. But voters must know every vote counted."

Berendt said party workers would spend the weekend analyzing results in various counties to determine which should be recounted.

P-I reporter Chris McGann

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Photos; Caption: (1) Rossi (2) Gregoire (3) JOSHUA TRUJILLO/P-I: Democrat Christine Gregoire announces that she will ask for another recount of votes in the governor's race. She was joined by her daughter Courtney and former Gov. Booth Gardner at a news conference at Seattle's Town Hall.

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