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November 24, 2004

VIA FACSIMILE TRANSMISSION

Mr. 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

Dear Secretary Reed:

I am counsel to the Washington State Democrats. I am writing this letter to request that as part of your canvass of county results your office investigate and correct apparent errors that occurred in a number of counties during the recent recount in the Governor's race. In reviewing canvass records submitted to you by the counties, we have noted instances where there were more votes cast than voters. In Franklin County alone (which went more than two to one for Rossi), the canvass report shows 84 more votes reported in the county than there are ballots reported. In addition, discrepancies statewide could have excluded thousands of valid votes. It is inconsistent with maintaining the public trust and confidence in our electoral system to allow such obvious errors to stand uncorrected, particularly in the closest statewide election in Washington State history.

In addition, despite the hard work of county officials, thousands of ballots were not counted as a result of inconsistent standards across the state. Hundreds of late discovered ballots, however, were included without clear assurance they were properly received and secured by Election Day. Your office is charged with creating

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and enforcing regulations to ensure fair and consistent treatment of all ballots. We urge you to exercise your authority to review county procedures, as you did with respect to Ferry County, and obtain consistent treatment throughout our state. Resolution of these issues is necessary before any party has to decide whether to request a manual recount and before your office has to decide whether a party or the state pays for it.

Our concerns are as follow:

1. More Votes Than Voters.

In Franklin County alone the official canvass reports more votes than Franklin County reports having ballots. That is, the total of votes reported for the candidates, plus under- and over-votes, exceeds the total number of ballots the county reports having on hand. Franklin County, by our reports, also did not perform any hand count cross-checks of its results, as required. Similarly, in Snohomish several precincts report more ballots on hand than there are registered voters.

In Franklin County, only 30 of 75 precincts on the original canvass show more ballots on hand than the sum of votes reported for each precinct. In 5 of 75 precincts the numbers tabulated to the Governor's race were less than the number of votes cast. In 40 of 75 precincts, votes tabulated to the Governor's race exceed the number of ballots cast. This resulted in a total, county-wide, of 83 more votes reported than ballots reported.

In the recount, a similar problem is apparent. Only 27 of 75 precincts are internally consistent. Again, county-wide the canvass reports 84 more votes for candidates and under/overvotes than there are ballots to be counted. The probability of mechanical defects in the machinery seems high, particularly since the manual counting of precincts that his designed to detect such errors was not done in Franklin in connection with either count.

We request that these errors be investigated, and that appropriate hand counts of all inconsistent precincts be performed. At a minimum, the cross-checks required by law should be performed.

We were able to ascertain these errors because Franklin County provided full information about its tally, including undervotes and overvotes. Absent this

information, the discrepancy would have been hidden from public view. Unfortunately many counties are not providing this information and the fact that there may be additional counties with blatant discrepancies. Please confirm that your office will be checking the details of these reports and that counties will promptly provide this valuable, complete information to the public.

2. Newly Discovered Ballots.

In a number of counties, auditors included and counted ballots in the recount that were not part of the original count. Obviously, there may be legitimate explanations for each discrepancy, and every legitimate vote should be counted. However, public confidence requires that local authorities account for how additional ballots were discovered, the source and origin of those ballots and that all appropriate security measures were followed to assure the status of those ballots between November 2 and the day they were discovered.

According to our field team, at least the following counties counted new ballots in excess of the original ballots cast: Grant County (66), Kittitas (34), Skagit (147), Pierce (9), Adams (7), Benton (3), Island (4), King (approximately 150) and Snohomish (224). It is our understanding that the Snohomish County canvassing board was unsure whether it should have counted the newly discovered ballots, so they segregated those votes so they could be removed from the total. It is also our understanding that they may have an audit trail that satisfies concerns regarding legitimacy and security.

3. Inconsistent Treatment of Signature and Other Issues on Provisional and Absentee Ballots.

It appears that in some counties, provisional and absentee ballots were accepted regardless of signature mismatch issues, while in others thousands were excluded from the count solely because of signature mismatch issues. Similarly, some counties allowed voters to fix signature ballots up to the day of certification (Grays Harbor County, for example) while at least one declined voters attempts to fix problems on that day (King County). As you know, consistent standards should have been applied statewide.

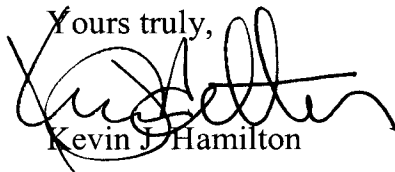
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We had earlier requested information on your review of county procedures and practices under RCW 29A.04.570. Due to the press of related activities, your office has not yet responded. Accordingly, we do not know if any of these counties have been subjected to such review. The statute requires that the reviews be performed before the recount "if possible," but the next best approach is to undertake such reviews before you finally accept the county results. The scrutiny we request today is thus required by statute unless you have already performed such reviews for the involved counties.

This is consistent with your obligation, reflected in RCW 29A.04.610 and .611 and elsewhere, to ensure "accurate tabulation and canvassing of ballots"; "[c]onsistency among the counties of the state in the ... operation of vote tallying systems and the canvassing of ... elections"; "[s]tandards and procedures for ... each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used"; "standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots"; "[u]niformity among the counties ... in the conduct of absentee voting and mail ballot elections"; and "[p]rocedures for conducting a statutory recount."

I want to thank you and your office for the great professionalism you have shown throughout this process. We also appreciate the efforts of every county auditor and their teams who have been working diligently to ensure an accurate vote. You earlier advised us that your goal was to complete your canvass of the counties by Tuesday but obviously accuracy and public confidence is more important than a tentative deadline set before these troubling incidents surfaced. Please advise us of your intentions by Friday at 10:00 a.m. We look forward to working with you to address the concerns outlined in this letter.

Yours truly,

Kevin J. Hamilton

KJH:cma
cc: Nick Handy, Director of Elections