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06-CV-00726-AF

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
MAY 24 2006

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

WASHINGTON ASSOCIATION OF CHURCHES, as an organization and representative of its members; WASHINGTON ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), as an organization and representative of its members; ORGANIZATION OF CHINESE-AMERICANS - GREATER SEATTLE CHAPTER, as an organization and representative of its members; CHINESE INFORMATION & SERVICE CENTER, as an organization and representative of its clients; FILIPINO AMERICAN POLITICAL ACTION GROUP OF WASHINGTON, as an organization and representative of its members; KOREAN AMERICAN VOTERS ALLIANCE, as an organization and representative of its members; SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) - LOCAL 775, as an organization and representative of its members; and WASHINGTON CITIZEN ACTION, as an organization and representative of its members,

Plaintiffs,

vs.

SAM REED, in his official capacity as Secretary of State for the State of Washington,

Defendant.

Civil No. 06-0726

**DECLARATION OF  
SARAH A. DUNNE**

**IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION**

*Decl. of Sarah A. Dunne in Supp. of Pl. Mot. for Prelim. Inj. (CV 06-0726)*

HILLIS CLARK MARTIN & PETERSON, P.S.

500 Galland Building, 1221 Second Ave  
Seattle WA 98101-2925  
206.623.1745; fax 206.623.7789

**ORIGINAL**

1 Pursuant to 28 U.S.C. § 1746, I, Sarah A. Dunne, hereby declare as follows:

2 1. I am an attorney at Hillis Clark Martin & Peterson, attorneys for Plaintiffs the  
3 Washington Association of Churches (the "Association"), the Washington Association of  
4 Community Organizations for Reform Now ("ACORN"), the Organization of Chinese  
5 Americans – Greater Seattle Chapter ("OCA-GS"), the Chinese Information & Service Center  
6 ("CISC"), the Filipino American Political Action Group of Washington ("FAPAGOW"), the  
7 Service Employees International Union ("SEIU") Local 775, Washington Citizen Action, John  
8 Doe, Jane Doe, and Jane Roe (collectively, "Plaintiffs") in this action.

9 2. Attached hereto as Exhibit A is a true and correct copy of the mail-in voter  
10 registration form available as of May 23, 2006, on the website of the Secretary of State of  
11 Washington State, at [http://www.secstate.wa.gov/elections/pdf/2006VoterRegForms/  
12 2006\\_VRForm\\_English\\_Fillable.pdf](http://www.secstate.wa.gov/elections/pdf/2006VoterRegForms/2006_VRForm_English_Fillable.pdf).

13 3. Attached hereto as Exhibit B is a true and correct copy of a letter dated January  
14 25, 2006, from Secretary of State Sam Reed to John Tanner, Chief of the Voting Rights Section  
15 of the Civil Rights Division of the U.S. Department of Justice, describing Washington State's  
16 status in implementing the Help America Vote Act of 2002. The letter is also available at  
17 [http://www.secstate.wa.gov/documentvault/Letter%20to%20the%20Department%20of%20Justic  
18 e%20on%20HAVA%20implementation%20-%20January%202006-1347.pdf](http://www.secstate.wa.gov/documentvault/Letter%20to%20the%20Department%20of%20Justice%20on%20HAVA%20implementation%20-%20January%202006-1347.pdf).

19 4. Attached hereto as Exhibit C is a true and correct copy of a report by the Brennan  
20 Center for Justice at NYU School of Law entitled *Making the List: Database Matching and*  
21 *Verification Processes for Voter Registration*, March 24, 2006, available at  
22 [http://www.brennancenter.org/programs/downloads/HAVA/svrd/SVRD%20matching%20report.  
23 pdf](http://www.brennancenter.org/programs/downloads/HAVA/svrd/SVRD%20matching%20report.pdf). The web version also contains an appendix of detailed, state-by-state descriptions of the  
24 database "matching" practices in forty-six states and the District of Columbia; the appendix  
25 description for Washington State is included in Exhibit C.

26 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the report  
27 of the United States Government Accountability Office entitled *Additional Data Could Help*  
28

*Decl. of Sarah A. Dunne in Supp. of Pl. Mot. for  
Prelim. Inj. (CV 06-0726) - Page 1 of 3*

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206.623.1745; fax 206.623.7789

1 State and Local Elections Officials Maintain Accurate Voter Registration Lists, June 2005,  
2 available at <http://www.gao.gov/new.items/d05478.pdf>.

3 6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the report  
4 of the National Commission on Federal Election Reform, co-chaired by former Presidents Jimmy  
5 Carter and James Baker, and also known as the "Carter-Ford Commission." The report is  
6 entitled *To Assure Pride and Confidence in the Electoral Process*, August 2001, available at  
7 [http://millercenter.virginia.edu/programs/natl\\_commissions/commission\\_final\\_report/fullReport](http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/fullReport.pdf)  
8 [pdf](http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/fullReport.pdf).

9 7. Attached hereto as Exhibit F is a true and correct copy of excerpts from the report  
10 of the task force collecting research for the Carter-Ford Commission, edited by John Mark  
11 Hansen, entitled the *Report of the Task Force on the Federal Election System*, July 2001,  
12 available at [http://millercenter.virginia.edu/programs/natl\\_commissions/](http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/task_force_complete.pdf)  
13 [commission\\_final\\_report/task\\_force\\_report/task\\_force\\_complete.pdf](http://millercenter.virginia.edu/programs/natl_commissions/commission_final_report/task_force_report/task_force_complete.pdf).

14 I declare under penalty of perjury under the laws of the United States of America that the  
15 foregoing is true and correct, and that this Declaration was executed on May 24, 2006 in Seattle,  
16 Washington.

17  
18 */s/ Sarah A. Dunne / Sarah A. Dunne*  
19 SARAH A. DUNNE

20 #330290 99732-002 72%q011.doc 5/24/2006

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*Decl. of Sarah A. Dunne in Supp. of Pl. Mot. for  
Prelim. Inj. (CV 06-0726) - Page 2 of 3*

HILLIS CLARK MARTIN &  
PETERSON, P.S.

500 Galland Building, 1221 Second Ave  
Seattle WA 98101-2925  
206.623.1745; fax 206.623.7789

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2006, I ~~electronically~~ filed this *Declaration of Sarah A. Dunne* with the Clerk of the Court ~~using the CM/ECF system~~ which will send notification of such filing to the following:

N/A

and I hereby certify that I have sent for service via hand delivered by legal messenger to be served on May 25, 2006 this document to the following non CM/ECF participants:

Sam Reed, Secretary of State, State of Washington  
Legislative Building  
Olympia, WA 98504-0220

Rob McKenna, Attorney General for the State of Washington  
Office of the Attorney General  
1125 Washington Street SE  
Olympia, WA 98504-0100

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 24<sup>th</sup> day of May, 2006 at Seattle, Washington.

/s/ Sarah A. Dunne *Sarah A. Dunne*  
Sarah A. Dunne, WSBA #34869

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# **Exhibit A**



STATE OF WASHINGTON  
SECRETARY OF STATE

## Mail-In Voter Registration Instructions

### Voter Registration & Voting

#### Voter qualifications

To register to vote in the state of Washington, you must be:

- A citizen of the United States
- A legal resident of Washington state
- At least 18 years old by Election Day

If you have been convicted of a felony, you must have your rights restored before you register to vote.

In the state of Washington, you do not have to register by political party.

#### Registration deadlines

You can register to vote by sending in a completed Mail-In Voter Registration Form at least thirty days before a primary or election. Additionally, you may register in person by going to your county elections department up to fifteen days before a primary or election.

If you have moved or changed your name, you may use the Mail-In Voter Registration Form to update your existing voter registration.

#### Change of residence

If you move to a new county, you must complete a new voter registration.

If you move within the same county, you do not need to re-register, but you must request a transfer of your registration. This can be done by using a Mail-In Registration Form, or by calling or writing your county elections department.

**NOTE:** You must transfer your registration at least 30 days before the election to be eligible to vote in your new precinct.

#### Keep your registration up-to-date!

If we do not have your current name or address, you may not be able to vote in the next election. Use the Mail-In Registration Form to send your name or address change.

#### Voting by absentee ballot

Any registered voter may vote by absentee ballot. You do not need to be ill or "absent" to be an absentee voter.

You may request an absentee ballot as early as 60 days before an election. (No absentee ballots are issued on Election Day except to hospitalized voters or replacement ballots for lost or destroyed absentees.) The request for an absentee ballot must be made to your County Auditor or elections department.

### Using the Mail-In Voter Registration Form

You complete the Mail-In Registration Form to:

- Sign up to vote in Washington state
- Update your registration if you move to a new address or change your name
- Apply to become an ongoing absentee voter

If you complete all sections, once you have signed the completed form, place it in an envelope and mail it to:

OFFICE OF THE SECRETARY OF STATE  
VOTER REGISTRATION BY MAIL  
PO BOX 40218  
OLYMPIA, WA 98504-0230

If you are qualified and the information on your form is complete, you will be mailed a voter registration card which will identify your voting precinct.

**Important:** See the "Registration Deadlines" and "Change of Residence" sections at left.

One-time absentee ballot requests may be made either by phone, fax or mail. You may also sign up to automatically receive an absentee ballot before each election. Just check the "Yes" box in the Ongoing Absentee Voter Request section of the Mail-In Voter Registration Form.

**NOTE:** Absentee ballots must be signed, postmarked, or delivered to the county election officer on or before Election Day.

**Questions?** Information and assistance is available online at <http://www.secstate.wa.gov> or through the Secretary of State's toll free Voter Information Hotline at 1-800-448-4881 (TDD 1-800-422-8683).

You can find your County Auditor or County Elections Department under Government Listings in your telephone directory, or see the County Auditors List on the Secretary of State's web site: <http://www.secstate.wa.gov/elections/>

# Mail-In Voter Registration Form Secretary of State

- You may use this form to:
- Register to vote in Washington state;
  - Update your registration if you move;
  - Change your name;
  - Request absentee ballots.

Please complete all the information in boxes 1 through 10 on the voter registration form below. Be sure to include your signature in box 10. Once you have filled out this form, fold on the dotted lines, seal flap, and mail.

If you are physically unable to sign this form, please mark an X in box 10 and have the person who assisted you in completing this form complete box 11.

If submitting this form by mail and you are re-registering to vote for the first time in this state, and did not enter any information into box 1A or B you must provide a copy of one of the following:

- Current photo ID
- Current utility bill
- Bank statement
- Government check
- Paycheck
- or other government document that shows your name and address

FOLD HERE FIRST

Use Black Pen - Please Print Clearly  NAME CHANGE  ADDRESS CHANGE BY WASHINGTON  NEW REGISTRATION IN WASHINGTON

**NOTE: Do not complete this form if you are not a U.S. Citizen** FOR OFFICE USE ONLY

Will you be at least 18 years of age or older before election day?  YES  NO  
 Are you a Citizen of the United States?  YES  NO

Federal & State Law require you to provide your WA Driver's or WA ID Card.  
 If you do not have a WA Driver's License or ID Card, provide the last 4 digits of your Social Security Number.

1 A. WA Driver's License  B. Last 4 Digits/SSN  Check box if you do not have a WA Driver's License, ID card, or SSN  3 Date of Birth (Month/Day/Year)

2 Last Name  Male  Female Daytime Phone Number ( ) ( )

4 First Name M.A.  Jr.  Sr.  III E-Mail Address (optional)

5 Washington Resident Address (Required) City or Town ZIP Code

6 Mailing Address Where You Get Your Mail (if different from above) City or Town State ZIP Code

7 Check any that apply:  Military Domestic  Military Foreign  National Guard/Reserves  U.S. Citizen Overseas  8 **ONGOING ABSENTEE REQUEST**  
 I would like to receive absentee ballots for all future elections  YES  NO

9 I was previously registered under this name and address

NAME \_\_\_\_\_ Sign as previously registered  
 STREET \_\_\_\_\_ COUNTY \_\_\_\_\_ X  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

FOLD HERE SECOND

**WARNING: If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration, you will have committed a class C felony that is punishable by imprisonment for up to five years, or by a fine of up to ten thousand dollars or both imprisonment and fine. (RCW 29A.08.210)**

## 10 Voter Declaration

By signing this document, I hereby assert, under penalty of perjury, that I am legally eligible to vote. If I am found to have voted illegally, I may be prosecuted and/or fined for this illegal act. In addition, I hereby acknowledge that my name and last known address will be forwarded to the appropriate state and/or federal authorities if I am found to have voted illegally. (RCW 29A.08.210)

I declare that the facts on this registration form are true;

I am a citizen of the United States;

I am not presently denied my civil rights as a result of being convicted of a felony;

I will have lived in Washington state at this address for thirty days immediately before the next election at which I vote;

I will be at least eighteen years old when I vote.

(RCW 29A.08.250)

SIGN OR MARK IN THE BOX

X

11 If you are physically unable to sign your name, please have the person who assisted you in completing this form provide the following:

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

DATE SIGNED  / /   
 Month/Day/Year

Rev 4-1

# **Exhibit B**



Legislative Building  
PO Box 40220  
Olympia, WA 98504-0220  
Tel 360.902.4151  
Fax 360.586.5629  
www.secsis.wa.gov

January 25, 2006

John Tanner  
U.S. Department of Justice  
Voting Section - Rm. 7243 - NWB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Tanner:

This letter responds to your letter of January 19, 2006, requesting a status report on HAVA implementation in the state of Washington.

**Section 301 - Voting Systems Standards**

**Overview**

Washington State will be in full compliance with all Section 301 standards by the first federal election in 2006.

The next election for federal office in Washington State is a primary on September 19, 2006, followed by the general election on November 7.

All punch card voting equipment had been replaced by January 1, 2006 and the replacement equipment will be used in the first state special election in February 2006.

Each local jurisdiction in Washington is allowed to purchase and maintain its own voting systems. These systems must meet the requirements provided in statute (RCW 29A.60) and rule (WAC 434-333). Among these requirements is that the state will approve any system to be used for voting purposes. The Secretary of State's Office certifies that new voting equipment as well as upgrades and modifications to voting systems meets the State's requirements as set forth in statute and rule.

Washington State law now requires a Voter Verified Paper Audit Trail (VVPAT) to be installed on all electronic voting devices. All Washington counties will purchase and install a device to provide for a voter verified paper audit trail on all electronic voting devices used in the first election for Federal office in 2006.

This requirement has been a challenge for Washington for three reasons.

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—15—

First, the equipment needed to meet the VVPAT requirement has been late in being federally certified.

Second, state law requires that voting system equipment must have been used in another state before it may be used in Washington.

Third, the VVPAT requirement applies to the DRE equipment provided by the voting system vendors to meet the accessibility requirements of Section 301 (3).

Not all counties will be in compliance with the accessibility requirements of Section 301 (3) by January 1, 2006 because some vendors were still in the final stages of obtaining federal qualification and state certification.

Each Washington County has selected the disability access unit compatible with that county's voting system.

Each Washington County has been approved by our office for HAVA grant to purchase disability access units.

Some counties have purchased federally and state certified disability access units and were in full compliance with this requirement January 1, 2006.

All Washington counties will be fully compliant with this requirement by the first federal election in Washington (September 2006). The following responds to the specific questions in your letter.

#### **Current Status**

(1) January 1, 2006, all voting systems in place in Washington State met the requirements of Section 301 with the exception of the disability access requirements in Section 301 (3).

All the voting systems used in Washington permit voters to verify their votes before the ballot is cast and counted as required in Section 301 (1.A.i and ii).

All polling place tabulation devices used in Washington notify voters of over-voted ballots and provide the opportunity to correct and resubmit the ballot per Section 301 (1.A.iii). State law also requires the voter be given the same notification when the device reads a ballot without any choices correctly recorded.

Central count systems and absentee ballots (historically over 70% of our voters vote by mail) provide the voter with clear instructions on how to correct ballot errors and obtain new ballots where necessary (Section 301(b)).

All systems certified and used in the state of Washington have the audit capability required in Section 301 (2). Even in counties using DRE equipment, the overwhelming majority of voters record their votes on paper ballots because they vote by mail. The DRE equipment certified and used in the state has the

capability of printing out the individual ballots for auditing purposes and those printouts have been used in at least one recount.

Four counties in the state are required to provide alternative language election materials. Those counties are closely monitored by DOJ and are substantially in compliance. All the voting systems in use in the state have the capability of providing alternative language ballots as required by Section 301 (4).

Both central punch card and optical scan systems have been upgraded, where necessary, to optical scan systems that meet the error rate requirements of Section 301 (5).

- (2) By the first election for Federal office, September 2006, voting systems meeting Section 301 standards, including Section 301 (3) , will be certified and in use throughout the State.

**Systems meeting Section 301 standards and in use for the next election for Federal office (September 2006):**

- (3) The following vendor systems meet the Section 301 standards.
- a. Diebold – GEMS (v.1.18.23) with AccuVote-OS (v1.96.5). This system is in place January 1, 2006 and (b) will be in use in the first state election, February 2006.
  - b. Election Systems and Software – M650, M100 and AutoMark. Voter Assist Terminal (2002) (NASED 1-16-22-12-001). This system was (a) in place January 1, 2006 and (b) will be in use in the first state election, February 2006.
  - c. Hart Interclivic – System 3.0 with eSlate (NASED N-1-04-12-12-005). This system was (a) in place January 1, 2006 and (b) will be in use in the first state election, February 2006.
  - d. Sequola Pacific - 400C and Edge II (NASED N-07-22-11-007). This system was (a) in place January 1, 2006 and (b) will be in use in the first state election, February 2006.
- (4) All counties (voting jurisdictions) had systems in place January 1, 2006 that meet the requirements of Section 301 with the exception of the disability access requirements in Section 301 (3). *See attached list entitled Appendix A for a list of voting systems by county.*
- (5) The following accessible voting systems meet the disability requirements of Section 301(a)(3) as follows.
- a. Diebold – GEMS with AccuVote-OS and AccuVote-TSx (NASED N-1-06-22-22-001, N-1-06-22-22-002). Having just completed the federal

qualification and state certification, the DAU will be (a) in place March 2006 and (b) in use in a state election April 2006.

- b. **Election Systems and Software – M650, M100 and AutoMark Voter Assist Terminal (2002) (NASED 1-16-22-12-001).** This system was (a) in place January 1, 2006 and (b) will be in use in the first state election, February 2006.
- c. **Hart Intercivic – System 6.0 with eSlate/DAU (NASED – to be determined).** Hart's DAU can not be used in this state until the voter verifiable paper audit trail required under state law is available in its System 6.0 version. Having just completed the federal testing and state certification when the NASED number is issued, the DAU will be (a) in place March, 2006 and (b) will be in use in state elections in April 2006.
- d. **Sequoia Pacific - 400C and Edge II (NASED N-07-22-11-007).** With some accessibility features on the Edge II available, this system was (a) in place January 1, 2006 and (b) will be in use in the first state election, February 2006. After the 2002 compliant version of the Edge II is nationally qualified and state certified (NASED - to be determined), a system with all disability features available, this system will be (a) in place, May 2006 and (b) will be in use in the first election for federal office, September 2006.

All counties will use the disability access units provided by their system vendors and are prepared to install the DAU systems as soon as they are available. See attached list entitled *Appendix A for a list of voting systems by county.*

(4) Washington Administrative Code defines what is a vote for each category of voting system used in Washington State, per Section 301 (6). (ref., WAC 434-261-075).

**Section 303(a) – Computerized Statewide Voter Registration List**

- (1) Currently, an interactive statewide voter registration database that meets the requirements of Section 303(a) is in use in Washington State.
- (2) Washington State's statewide database was developed by a team consisting of staff from the Secretary of State's Office and consultants from an outside vendor. A Request for Questions and Qualifications was issued in June of 2005, and a team of consultants was chosen from Microsoft to work on this project. This information is available online at the following address:  
<http://www.sos.state.wa.gov/office/procurements.aspx> . Technical documents were previously sent by CD to your office.

- (3) We are currently implementing the data verification procedures for all new registrants under Section 303(a)(2)(A)(ii) and conducting data matching procedure for first-time registrants by mail under Section 303(b)(3)(B)(ii).
- (4) Washington's computerized statewide voter registration list serves as the official list of legally registered voters in the state. A unique identifier is assigned to every registered voter and will remain with the voter upon relocation in the state.

The Secretary of State's Office has agreements with several state agencies. The Department of Licensing (DOL) has provided the complete current list of driver license numbers listed on its system. DOL has contracted with AAMVA for a mechanism whereby the last 4 digits of SSN with registrant's name and DOB can be checked against the Social Security Administration's database. The Washington State Patrol and Administrator of Courts have provided felony records for verification of ineligible voters. Department of Health is providing, at scheduled times, its most current listing of death records for deceased voter verification.

Local election officials have immediate access to enter and view information in the computerized list. The computerized list is used to conduct all federal elections. Only persons from the computerized list are eligible to vote.

All list maintenance performed is in compliance with the National Voter Registration Act of 1993. Felony status verifications are performed on a quarterly basis at this time. Deceased and duplicate status verifications are performed on a monthly basis. Duplicate voter registrations are verified prior to making a person legally registered, as well. To ensure that only ineligible voters are removed from the computerized list, election workers review records prior to removal.

A web site publishing has been developed to make more information available on the statewide voter registration database and may be found at online at the following address: <http://www.sccstate.wa.gov/elections/vrdb/default.aspx>

Washington State is making every effort to comply with the requirements of HAVA in an orderly and measured fashion. Our goals are to encourage and enable every voter to participate in the election process, as well as to guide and assist the County Auditors in conducting accurate and fair elections. We trust the foregoing information is responsive to your request. If you desire further information, please advise.

Sincerely,

SAM REED  
Secretary of State

SR:pf