**Superior court**

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**okanogan county**

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| James M. Miller,  Citizen Petitioner,  vs.  Secretary of state, Kim Wyman  Respondent | Case No.  **PROVIDE AN UNBROKEN HUMAN CHAIN OF CUSTODY TO VERIFY IDENTITY, COLLECT, TALLY, CERTIFY, REPORT AND IMMEDIATELY PUBLISH THE LOCAL TALLY CARDS FOR ALL ELECTION RESULTS AND NOT USE ELECTRONIC DEVICES OF ANY KIND** |

**WRIT OF MANDAMUS**

/S/ James M. Miller

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| --- |
| James M Miller, Citizen Petitioner  1 Blue Sky Place  Omak, WA 98841  (425) 471-8101  jmiller@leader.com  August 6, 2018 |

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**INTRODUCTION**

Chain of custody in the current election process does not satisfy the Rules of Evidence, is not bipartisan, and relegates citizens to mere spectators.

The Constitution of the State of Washington, Article I, Declaration of Rights, Section 19, Freedom of Elections states:

“All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

Petitioner received an initial response to his inquiries into election processes. Exhibit A.

Statistical sampling of the vote cannot satisfy the rules of evidence because it cannot count all the votes, which is the only standard that can apply. State v. Campbell, 691 P. 2d 929 - Wash: Supreme Court 1984.

Petitioner has concluded that the current Washington State election process has been developed through administrative overreach that contravenes the law that says use of voting machines (instead of bipartisan human vote counters) can only be made by legislative decision. The use of electronic voting machines has *never* been the subject of a robust public debate on the most sacred of our citizen’s rights—the right to free and fair elections. Remarkably, no unbroken bipartisan chain of custody exists in the current election process. In addition to common sense, the law says this chain of custody must satisfy the Washington Rules of Evidence, among them are WAC 434-662-060, WAC 434-250-110, WAC 434-261-050.

Worse, with our mail-in ballot process, we have no way to even determine a voter’s identity and qualification to vote, who actually marked the ballot? Are they a citizen, do they live in the state? Are they even alive? Were they bussed in? Have they voted multiple times? Is this actually a person’s pet named "Steve" voting? *No one knows*. Therefore, the Rules of Evidence cannot be satisfied in any regard. The current move to do statistical sampling cannot possibly stop the onslaught of fraud that our current system invites.

No actual human counting of the mail-in ballots occurs in the current voting processes under the control of the Washington Secretary of State. Administrative authority, instead of legislative authority, has been relied upon to implement voting machines. These machines are whole *replacements* for bi-partisan chains of custody. This administrative overreach without legislative inclusion, is clearly unconstitutional; the 'will of the people' has been put in jeopardy.

Instead, citizens are merely spectators. The actual counting, tallying and reporting processes themselves are done inside computer software that is completely under the control of county supervisors and staff—who are generally partisans of the party currently in power, and therefore, not bipartisan by nature.

1. **Unseen digital bits cannot survive the Rules of Evidence regarding chain of custody.**

The vote counting function resides solely as *unseen digital bits* inside a vote-counting computer with *no human verification* performed at the time of the vote. In the current election system, while one might vote for Candidate A, the unseen software can easily change that vote to Candidate B. No bipartisan group can check for such fraud.

Brenda Galarza, Records/Public Disclosure Officer on Jun. 29, 2018 confirmed that no bipartisan chain of custody exists. **Exhibit B**.

1. **United States election assistance commission *substituted* for bipartisan chain of custody by Washington State citizens.**

Ms. Galarza says that the State has replaced a bipartisan investigation of electronic voting devices and software in our state with a *federal* break in the bipartisan chain of custody by “an independent testing authority designated by the United States election assistance commission” citing RCW 29A.12.080.

This statute violates the sovereignty of Washington State citizens’ over our elections—and thus breaks the chain of custody. *See* RCW 29A.12.030 (“The secretary of state [not the federal government] shall inspect, evaluate, and publicly test all voting systems or components of voting systems”). The federal government has no authority to be involved in this important State’s rights issue. This is a flagrant abuse of State’s Rights on the Washington State vote.

1. **“Two county auditor staff” *substitute* for bipartisan chain of custody.**

Ms. Galarza says “inappropriate or unauthorized access to the secured ballot materials and must be accompanied by at least two county auditor staﬀ at all times. (WAC 434-261-045, WAC 434-250-110 & RCW 29A.40.110).”

This statement affirms that no bipartisan chain of custody is used. “Two county auditor staff” is not a bipartisan chain of custody.

Also, no procedure exists for bipartisan verification that the person or entity that mailed in the ballot is who he or she purports to be, or that he or she is qualified to vote.

1. **No citizen sees a “verifiable paper ballot” after the electronic scan.**

Ms. Galarza says that each voting device “must produce a voter veriﬁable paper ballot.” This procedure is not followed and can only be considered willfully misleading. While she quotes the statute, this is not what happens.

All Washington citizens receive paper ballots in the mail. They do not use electronic voting machines to place their vote. See RCW 29A.40.020. Therefore, no citizen receives, or can verify, the electronic scan that occurs *after* the ballot is received back in the mail. In our state this opportunity for fraud is worse since, with mail-in ballots, we don’t even know if the person who mailed it is real or qualified to vote. The counting is totally in the dark. This process is another break in a bipartisan chain of custody. In short, there is *no bipartisan chain of custody comparison* of the ballots whatsoever.

Article 1, Section 1 of the Washington Constitution states:

“**All political power is inherent in the people**, and governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights.” (Emphasis added).

Washington citizens are being forced to rely on *pure speculation* that the electronic machinery used to verify the voter’s identity, as well as scan, count and report the ballots are accurate. Bipartisan citizen counters are not part of the process.

1. **The current voting process *forces* election administrators to commit fraud since they cannot certify any vote in any county. In short, speculation of the integrity of a vote counting machine does not satisfy the Rules of Evidence regarding chain of custody.**

In the current election procedures, our state election judges are required to accept the unilateral word of private voting machine vendors who have allegedly validated a federal commission. Such outside certifications of our election devices, by nature, fail to ensure an unbroken bipartisan chain of custody required by the Washington State Constitution.

Vendor and federal statements of certification utilized by our officials should be more accurately defined as statements of faith, since they are relied upon in place of bipartisan review by citizens.

The claims made by election officials to Petitioner are largely false and thus at odds with the statutes. For example, the Washington Supreme Court stated in *Armendariz*:

¶ 8 Where the plain language of the statute is subject to more than one reasonable interpretation, it is ambiguous. *Cockle v. Dep't of Labor & Indus.*, 142 Wash.2d 801, 808, 16 P.3d 583 (2001). This court may attempt to discern the legislative intent underlying an ambiguous statute from its legislative history. Id. Likewise, this court may look to authoritative agency interpretations of disputed statutory language. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 593, 90 P.3d 659 (2004). *State v. Armendariz, 156 P. 3d 201* (Wash. SC 2007).

Therefore, since the responses I received are ambiguous at best, this Court has the authority and duty to grant this writ to prevent prejudice against the citizens for a fair vote.

1. **Senator Patty Murray agrees that we must discard electronic voting, use paper ballots and insure unbroken, bipartisan chain of custody.**

Senator Patty Murray (D-WA) recently introduced “The Protecting American Votes and Elections Act” *mandating paper ballots* and *risk-limiting Audits*. She stated just weeks ago on Jun. 12, 2018:

“With known vulnerabilities and a clear history of foreign interference, it is critical we take meaningful steps to protect the integrity of our elections and ensure the public’s faith in our voting system.” **Exhibit C**.

Why wait? A reasonable person will ask why Senator Murray did not first move to fix *Washington’s* election system long ago? Nevertheless, this writ will remedy her delay in addressing *our* sovereign need to protect *our* elections.

According to Stuart Holmes, Voting Information System Manager, Office of the Secretary of State, fifteen percent (15%) of our electronic voting machines are provided by ES&S. Exh. C.

1. **Washington vote counting vendor ES&S *admits* a secret backdoor that can be exploited by hackers.**

ES&S just admitted to Senator Ron Wyden (D-OR)—after multiple prior denials—that they have secretly embedded the software program PCAnywhere in their voting machines, ostensibly to allow their engineers to maintain their devices remotely. This excuse rings hollow since ES&S lied about the presence of this backdoor access. The reality is that *any* programmer of normal skill in the art—not just ES&S programmers—can access these networked or standalone machines through preinstalled firmware and media voting devices if they have the correct username and password. See *Newsweek*, July 17, 2018 [[1]](#footnote-1) This fact alone shows sufficient *prima facie* risk to grant this writ. **Exhibit J**.

Further, on July 11, 2018, Senator Wyden testified to the U.S. Senate Rules Committee and published a Senate statement subtitled: Testifying at Senate Rules Committee, Wyden Blasts Voting Machine Manufacturers, Calls for Passage of His Bill Mandating Paper Ballots. [[2]](#footnote-2)

1. **Dubious OpTech software is contained in many Washington State voting machines.**

On Jul. 23, 2018, Petitioner was told by Stuart Holmes, Voting Information Systems Manager, Office of the Secretary of State that “Smartmatic voting systems are not certified or used in the State of Washington.” Exh. B.

However, the software engine inside Smartmatic is OpTech. OpTech software is also used in similar systems that *are* used in Washington, including ES&S (6 out of 39), Sequoia and Hart InterCivic (20 out of 39). **Exhibit E**

*See* also Angela Gunn. (Nov. 1, 2006). E-voting and voter registration: The vendors - Who's building the gear that's running the show? *Computerworld*. **Exhibit F** (“Smartmatic Corp., is privately owned, with a controlling interest held by founder and CEO Antonio Mugica. Mugica holds dual Spanish and Venezuelan citizenship. Sequoia offers AVC Edge and AVC Advantage DRE units, an AVC Edge DRE/VVPAT unit, and sells a Sequoia-branded Optech Insight optical scanner” and “Election Systems & Software also offers an Optech line”).

1. **Proof of foreign interference in Washington State elections.**

Hart InterCivic used in the State of Washington licenses Sequoia’s / Smartmatic’s Optech Insight software originally developed in Venezuela.

*See* the National Institute of Standards (NIST) analysis which shows the real risk of foreign influence in our vote.[[3]](#footnote-3)

Hart InterCivic licensee, Smartmatic is foreign-owned by SGO Corporation Limited (UK) / Smartmatic that is owned by British Privy Counselor associated with Lord Mark Malloch-Brown. Malloch-Brown is a close colleague of globalist George Soros who openly works to destabilize American elections. Malloch-Brown was a founding chairman of Soros’ Open Society Foundation, vice President of Soros' Quantum Fund, and Vice Chairman of Soros' 'Soros Fund Management'. While Malloch-Brown was Deputy Secretary of the United Nations, he rented a Soros estate in upstate New York.

The involvement of Malloch-Brown and Soros in the OpTech licensing (inside ES&S and Hart InterCivic) shows an obvious threat of foreign interference in Washington State’s elections. *See* Lord Mark Malloch-Brown Biography and Timeline. **Exhibit G**.

In Petitioner’s FOIA questions, the state sidestepped the issue of the common OpTech software. This discrepancy begs the question as to how OpTech can be certified in ES&S and Hart InterCivic and not certified in Smartmatic. This ambiguity is deeply troubling, especially considering that ES&S’s blatantly lied to Senator Wyden about their PCAnywhere backdoors. **Exhibit. I**.

1. **Incurable Uncertainty – Numerous breaks in the bipartisan chain of custody must be cured before electronic voting can be relied upon, if ever.**

The State’s current election procedures create an incurable uncertainty as to the veracity of the vote count since the process has numerous breaks in the bipartisan chain of custody as discussed herein, as highlighted by Senator Ron Wyden. *Supra*.

“Trust me” affirmations by election officials alone are inadequate to trust the vote tallies. **Counting the vote is the exclusive purview of the citizens themselves.** State bureaucrats have an *inbuilt conflict of interest* to have their bosses remain in power.Washington State’s election machine processes suffer from an incurable uncertainty regarding the ballot vote tally process and results. In addition, as soon as a ballot is read into the scanner, the votes are *hidden*, secret and unable to be certified. **This is a break in the bi-partisan chain of custody**.

Put more simply, on election day, no identity validation is done, and no bipartisan *human* tally of the votes is used to audit the ballot scanning machines of the mailed in ballots.

All testing of electronic voting machines is done *a priori* (before a vote). No *post priori* (after the vote) testing is done. This too is a flaw in the certification and auditing processes. Common sense says that the current system is ripe for fraud.

1. **No honest engineer could certify electronic voting machines.**

Even as advancing technology and contemporary lifestyles drive evolution in our method of voting, Washington’s statutory regime manifests clear legislative intent to assure that secrecy in the method of voting in every election is absolute.

The secret ballot must not devolve into a mere ‘state secret’ held by officials promising not to tell. And yet, with the current technology, a state secret has occurred with the implementation of machine voting. No matter how many tests are done, the voter is dependent on speculation rather than bi-partisan, empirically observable phenomenon.

1. **The citizen sees nothing; the “observers” are mere spectators.**

The citizen cannot see the circuits, firmware, malware, or any software. The citizen sees NOTHING about how his or her vote is tallied. They are not present when the machines print a receipt, so they cannot check the scan for accuracy. The voter does not know if the software could detect when it was being tested and fool the testers—like the Volkswagen diesel fraud that hid poor emissions results from regulators for years. The software for the Volkswagen modified itself under test. **Exhibit H**. This very same possibility exists with all the election machines used by the State.

1. **Washington State voter’s rights to a fair election should not be subjected to speculation as to the authenticity.**

Since no empirical human, bipartisan observation at all is part of this counting and reporting process, it is incurably uncertain.

The citizens of the State of Washington have no adequate remedy for this incurable uncertainty other than this Writ of Mandamus. The Secretary of State, Kim Wyman, must be compelled to:

(1) Verify the true identity and qualification of each voter to vote,

(2) Add human bipartisan counting of paper ballots where a voter submits the vote card and immediately has his or her finger dipped in suitable purple voting dye used around the world to ensure “one person, one vote,”

(3) Preparation of a tally sheet that is certified by the human bipartisan counters and immediately photographed and published on each county website,

(4) Hand delivery of that tally sheet to the state election tabulator by each group of county bipartisan election judges,

(5) Verification that the state election tabulator has entered the county’s certified tabulation. This process must be done in lieu of or in addition to the use of electronic devices that can be used as an audit verification adjunct—but never again as the primary vote counting and tally processes.

The state will prevail without this injunction, as no remedy is being offered, and the will of the people is subject to the very real danger of interference in free and fair elections.

The benefit of this injunction outweighs any process utilized by the state, if that process thwarts the true and constitutional expression of the will of the people at the polling place.

The people of the State of Washington have the right of relief from this current state election process that evidently thwarts their constitutional rights.

It is the duty of the Secretary of State to provide a free election according to the Washington State Constitution without regard to any hardship such a duty imposes.

According to the Secretary of State, she recognizes the vulnerabilities in the State’s elections processes that this writ addresses. This is more prima facie evidence of a problem whose solution appears to be being delayed for purely partisan political reasons.

Brenda Galarza, representing Kim Wyman, announced that voting irregularities will be addressed in 2019 using human statistical sampling of ballots. Exh. B.

First, why wait until 2019?

1. **Statistical sampling is easily fudged and does not replace unbroken bipartisan chain of custody sufficient to satisfy the Rules of Evidence.**

Second, why statistical sampling when we can just count and certify all votes in real time? Statistical sampling appears to be another euphemism for an excuse to hide rigged voting. Bipartisan human counting solves this problem.

State officials always use alleged cost savings to justify continued use of electronic machines. This argument is fallacious for several reasons.

First, the primary objective is a free and fair vote, not cost savings. **A fair vote—no matter what it costs—is the true objective.**

Second, bipartisan citizen volunteers needed to count the votes do not require payment for their services.

Third, it is very easy for bureaucrats to hide partisanship inside the cost savings argument.

Fourth, if vote counting takes a week or more, so be it. The rush to have election-night results only serves to hide and promote fraud and a rush to bogus judgment.

By the Senator Murray’s and Secretary of State Wyman’s admissions, the machine counts do not provide the certainty necessary to meet statutory requirements. Only a whole and complete, bi-partisan chain of custody human tally count of the ballots can overcome the incurable uncertainty of the existing processes.

Any process that is hidden and secret (like the ones currently used) is unconstitutional. In fact, the current processes force election judges in each county to certify a fraud, since they have not themselves counted the votes.

Statistical mathematics, silicon circuits, certificates of authenticity, incomplete responses to public records, protestations, and technical obfuscations are not logical or acceptable substitutes for direct human empirical observations operating under the constitutional principle of bi-partisan chain of custody.

The Petitioner also makes the claim that the decision to utilize electronic voting machines in any manner, has not been properly adopted by the state pursuant to *Ballasiotes v. Gardner, Supreme Court of Washington, March 18, 1982, No. 48295-1.* This court specifically addressed the issue at hand. The current system is administrative by nature, and directly contradicts this opinion. The use of machines, by any county, electronic or otherwise, to replace the un-broken bi-partisan chain of custody is not supported, since electronic machines were never specifically debated and decided by the legislature.

The ignoring of *Ballasiotes* is *prima facie* evidence that no machines including electronic devices in the electoral process in counting the ballots are legal as they have not been properly adopted by the people. To be clear, the Petitioner is not contending that machines can’t be used to transport ballots, move them around, or to publish pictures of tally sheets on the “Internet of Things”; the Petitioner is saying that machines can’t be used in the bi-partisan counting and tally of the votes; the machines have not been ‘properly adopted’, and represent a premia facie break in the bi-partisan chain of custody; which is illegal in the State of Washington.

1. **Vote counting process is not bipartisan.**

### Nowhere in WAC 434-260 ELECTION REVIEW PROCESS AND CERTIFICATION OF ELECTION ADMINISTRATORS is the vote counting process in the State of Washington bipartisan—meaning selected election administrators from each political party oversee the vote counting process. Rather, paid partisan employees of the Secretary of State do. This is yet more *prima facie* evidence that vote counting in the State of Washington is run by bureaucrats that can press their own agendas outside the electoral process. The opportunity for manipulation and fraud is evident.

**It all depends on what the definition of “may” is**

### Instead, “observers” from parties merely watch the process like spectators at a baseball game with their beer and brats. See WAC 434-261-020. The break in the bipartisan chain of custody is quite evident in WAC 434-250-110. Processing ballots:

“(6) Final processing of voted ballots, w*hich* ***may*** *include scanning ballots on an optical scan voting system*, may begin after 7:00 a.m. on the day of the election.” (Emphases added).

This law implies that ballots are counted by humans. However, very evidently, the Secretary of State has relied upon the single word “may” for her overreaching authority that now counts ALL ballots electronically. A reasonable person will consider the substitution of ALL for MAY a willful misinterpretation of the statute, if not administrative abuse.

Since Petitioner has established that unseen, *unobservable* electronic bits and bytes in all electronic voting systems breaks the bipartisan chain of custody, the Washington State Statute itself proves that a break occurs at vote counting. This is more *prima facie* evidence why this writ must be granted.

**Statistical sampling *implies* vote counting errors which citizens do not want!**

The need for this writ is further reinforced by the most recent order by the Secretary of State to do statistical sampling of one race in three precincts in each county.[[4]](#footnote-4) This process is mathematically meaningless. In mathematics, a statistical standard of deviation ***implies and assumes*** errors in the vote counting! Predicative mathematical values in a statistical sampling are meaningless to a fair and accurate vote. **It assumes that it is not accurate!**

The 2004 HBO expose *Hacking Democracy* clearly shows how electronic voting machines can be tampered with *after* passing quality assurance testing.[[5]](#footnote-5)

**STATEMENT OF THE CASE**

The previous discussion and law is fully incorporated herein. Counting votes in a bipartisan way is a founding principle of a Constitutional Republic. Unbroken chain of custody must satisfy the Washington State Rules of Evidence.

The Washington State Constitution states that that free elections without interference are a citizen’s right. Any uncertainty in the count is unacceptable.

The burden to maintain the reliability of the vote is the highest and most solemn duty of a citizen in our Republic. It is the county auditor’s duty to ensure that processes, as defined by the Secretary of State are properly enabled. Among these duties is the maintenance of a bipartisan chain of custody of the ballots and the counting of those ballots.

This maintenance should be by *empirical observation by humans*, who cooperate under lawful penalty to ensure that the ballots, as marked, are not compromised. Elections chain of custody refers to physical and electronic evidence controls for:

1. who can vote
2. who did vote
3. actual ballots as marked by each voter, and
4. evidence transfer and storage

The current process is highly prone to recounts and litigation because it departs dramatically from the statutory requirements.

Proper accounting requires chain of custody measures, which auditors use to assess information reliability. Chain of custody is dictated by the Rules of Evidence. The current election processes do not comply at any point.

The current State of Washington process to maintain bi-partisan chain of custody fails under the current process. The reasons for the failure is very simple. First, the person’s identity and qualification to vote cannot be verified. Then, the use of the electronic scanning machines causes the loss of bi-partisan chain of custody as soon as a ballot is scanned. While a paper receipt is created at the time of the scan, the voter is not present since the ballot was mailed in. So, the requirement for a printed receipt is nonsensical. The voter is treated more respectfully at Dairy Queen. At least they get a real receipt at DQ!

Further, in the current process no one knows if the person’s name on the mail-in ballot is really that person. The notion that proper voters identification is somehow a burden on the citizenry is nonsensical. We show our identification every time we use a credit card, or cash a check, or sign up for Medicare or Medicaid.

In the current State of Washington voting process, no qualified voter is able to confirm that the scan of their ballot is accurate or is totaled accurately. The current system defies logic and commons sense.

There is no summation tally audit for the voting machines that scan the mailed in ballots. Further, the citizen’s vote is not counted by bi-partisan humans.

This process is the definition of incurable uncertainty. No certificate of assurance from any entity, test, encryption, or machine language can prevent this loss of observation.

A human citizen voter cannot observe an integrated circuit, silicon chip, or the software programming embedded on the chip. Therefore, no one attests to an unbroken chain of custody. A statistical sampling of the voting summation cannot cure this uncertainty since such samplings are based on totals that have not been prepared by bipartisan counters. On Aug. 06, 2018, Petitioner spoke with Jessica at the Okanogan County Auditor Office. She confirmed that a new statistical sampling of ballots will start occurring with the 2018 primary election on Aug. 07, 2018. However, she was unable to provide Petitioner with the bulletin from the Secretary of State that directed them to perform the new sampling.

The logic is simple . . . what the human eye cannot see, without concurrence under bi-partisan chain of control, is a fraud disguised by technology.

Evolving voting methods have produced systems that contain significant holes in chain of custody which call election legitimacy into question.

Three voting methods breach bipartisan chain of custody:

1. vote-by-mail,
2. electronic voting, and
3. Internet voting.

These methods make it IMPOSSIBLE for the public to verify that:

(a) the voter is who they say they are and are qualified to vote,

(b) all ballots cast were counted;

(b) ballots counted were not altered; and

(c) unauthorized votes were not added.

Therefore, it is the duty of the Secretary of State, Kim Wyman, to provide a cure for this outrageous indiscretion regarding the expression of the will of the people. She should be compelled by this Court to direct each county: (1) to only allow counting of the mail-in ballots by bipartisan citizens groups who verify the valid identity of each voter, and (2) to post the tally results on each county website so that the certified tally card is immediately observable by all citizens; the intent is to ensure ‘human ballot counting and tally’ while maintaining observable bi-partisan chain of custody over the ballots themselves.

Remarkably, none of these public officials who responded to the Petitioner could provide evidence that the election machines themselves were safe from internal/external tampering, or that the processes surrounding the use of these machines were able to provide an unbroken, bipartisan change of custody.

It is evident that this assurance could not be provided because it cannot be verified. The petitioner’s request for more information about the voting machines was denied under RCW 42.56.270, the Public Records Act.

Petitioner filed for administrative relief in court but was informed that he would be liable for all legal costs incurred by the vendor to respond, per the Okanogan County Prosecuting office.

Petitioner was provided the copious documentation about election processes and controls used by the State. **Exhibit K.** The necessity for this writ was made patently obvious after discovering the flaws in our processes that are large enough to drive a truck through.

1. **Petitioner is a recognized expert in organization systems, procedures and processes**

The Petitioner is a retired Boeing project manager who has been responsible for complex airplane critical and flight safety avionics software and hardware involving multiple-billion dollar projects. This makes him an expert in system processes, procedures and quality. The Petitioner hereby certifies that in his professional judgment, after studying all the information provided in this writ, the programs and processes used in the State of Washington voting processes are woefully inadequate and appear to be willfully so. Petitioner asserts that no honest process engineer could possibly certify what can best be described as a magical process that could have only ever been intended to rig elections. Petitioner’s firm conclusion is that the systems and procedures are so convoluted as to lead a process engineering expert to conclude that *mischief* is the only possible use and outcome of the current election system in the State of Washington. *See* Petitioner’s expanded resume and expertise in **Exhibit L**.

1. **Microsoft controls our data; Microsoft is not bipartisan**

The Secretary of State’s website under “System Security” states:[[6]](#footnote-6) **Exhibit M**

“Patch Management:

The Quality Assurance (QA) system is patched the day after any “patches”, “hotfixes”, or “cumulative” updates are received from **Microsoft**. Production (prod) servers are patched after the system updates are fully tested in QA and authorized for deployment. In most cases, the production system patched two weeks after QA to allow for testing and verification.

Elections Results Site

The elections results are hosted in **Microsoft’s** Azure cloud, which provides server and geographic redundancy.” (Emphasis added.)

**It is notoriously public knowledge that Microsoft is a partisan of far left-leaning organizations.** *Fortune* magazine assessed Microsoft’s political leanings stating:

“Microsoft is another supporter of the Brady Campaign, which earned it low marks on 2nd Amendment rights. The tech giant was also hit for being “a partner of The Nature Conservancy, a liberal and active proponent of cap-and-trade and a carbon tax.”

In its evaluation of Microsoft, 2ndVote also says that the company supports organizations, like Center for American Progress and the League of United Latin American Citizens, which support sanctuary cities.”[[7]](#footnote-7)

The Center for American Progress is notoriously known to have been founded by Democrat operative John Podesta, who is notoriously known to have intimate political ties to George Soros, Hillary Clinton, The Clinton Foundation and other far left-leaning political organizations.

A reasonable person can easily see that the Washington State election process is completely compromised by Microsoft’s partisan control of vital elements of our election system. **Exhibit N**.

**LAW & Argument**

The previous discussion and law is fully incorporated herein. The current ballot scanning process in the State of Washington cannot guarantee that the tally is correct because it is not performed by humans. Voters do not even observe the electronic scanning in the counties. Humans only enter the ballot into the machine, and no human tally occurs outside of the machine, thus breaking the bi-partisan chain of custody empirical observation.

Petitioner, and the rest of the citizenry, have a right to rely upon the truthfulness of the statements of public officials. When those statements contradict the statutes, this Court can intervene. The Washington Supreme Court stated:

¶ 8 Where the plain language of the statute is subject to more than one reasonable interpretation, it is ambiguous. *Cockle v. Dep't of Labor & Indus.*, 142 Wash.2d 801, 808, 16 P.3d 583 (2001). This court may attempt to discern the legislative intent underlying an ambiguous statute from its legislative history. *Id.* Likewise, this court may look to authoritative agency interpretations of disputed statutory language. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 593, 90 P.3d 659 (2004). *State v. Armendariz*, 156 P. 3d 201 - Wash: Supreme Court 2007 at ¶ 8.

This Court may grant relief when a state agency is acting erroneously and in contradiction to the statute. The Washington Supreme Court stated in *Port of Seattle*:

This court may grant relief if we find that the PCHB [Pollution Control Hearings Board] order is "outside the statutory authority or jurisdiction of the [PCHB]" or if the PCHB has "erroneously interpreted or applied the law." RCW 34.05.570(3)(b), (d). Where statutory construction is necessary, this court will interpret statutes de novo. Pub. Util. Dist. No. 1, 146 Wash.2d at 790, 51 P.3d 744. *Port of Seattle v. PCHB*, 90 P. 3d 659 - Wash: Supreme Court 2004 at 669.

While equitable estoppel is not favored, as is request here, it is needed when a manifest injustice is threatened or is occurring, as is the case here. The Washington Supreme Court affirmed this in *Ecology*:

Equitable estoppel against the government is not favored. *Id*. Accordingly, when the doctrine is asserted against the government, it must be necessary to prevent a manifest injustice and applying estoppel must not impair the exercise of government functions. *Id*. Proof of the elements of estoppel must be by clear, cogent and convincing evidence. *Id*. *State, Dept. of Ecology v. Campbell & Gwinn*, 43 P. 3d 4 - Wash: Supreme Court 2002 at 14.

The *Ecology* opinion describes a procedure for determining if a manifest injustice is occurring:

Equitable estoppel may apply where there has been an admission, statement or act which has been justifiably relied upon to the detriment of another party. *Lybbert v. Grant County*, 141 Wash.2d 29, 35, 1 P.3d 1124 (2000); *Beggs v. City of Pasco*, 93 Wash.2d 682, 689, 611 P.2d 1252 (1980). Establishment of equitable estoppel requires proof of (1) an admission, act or statement inconsistent with a later claim; (2) another party's reasonable reliance on the admission, act or statement; and (3) injury to the other party which would result if the first party is allowed to contradict or repudiate the earlier admission, act or statement. *Theodoratus*, 135 Wash.2d at 599, 957 P.2d 1241. *Id*.

This writ satisfies the need for this Court to equitably estop the Secretary of State from engaging in fraudulent voting practices.

1. “*an admission, act or statement inconsistent with a later claim*” - As shown above, the admissions and statements by public election officials are inconsistent with the statute and with the election system procedures and processes.
2. “*another party's reasonable reliance on the admission, act or statement*” - Both Petitioner and all Washington citizens have reasonably relied upon the Secretary of State’s election procedures and processes as the sole supplier of these public services. Therefore, the Petitioner has no choice but to rely upon these statements as truthful and in compliance with the statutes.
3. “*injury to the other party which would result if the first party is allowed to contradict or repudiate the earlier admission, act or statement*” – A reasonable person knows that elections have direct material consequences to the administration of our Constitution. Winning candidates are given real power and authority in our State as a result of these elections. The new evidence shows that these publicly-elected officials have been empowered on the basis of flawed, if not fraudulent, voting processes that *pretend* to be compliant with the statute. As a result, any mere repudiation of prior statements and admissions only further damages the Petitioner by allowing the officials to further obfuscate the true nature of our flawed elections systems. The damages to Petitioner and our State are only exacerbated and real bipartisan fixes are only delayed.

The responses received by state public officials refused to provide substantive information about the mechanics of the voting systems currently used. **Exhibit I**. The documentation provided by the Okanogan County Auditor’s office is too voluminous to incorporate herein. Therefore, it will be made available upon request pursuant to Wash. R. Evid. 1006.

**Purity of the Ballot**

The Supreme Courtin Hanson affirmed the priority for purity that should motivate this Court to grant this writ:

Our democratic system of free and fair elections hinges on enforcement of the Constitution’s and Legislature’s carefully constructed array of provisions securing for an absolutely secret method of voting. The Constitutional requirement of an absolutely secret ballot, independently and as implemented by statute, is fundamental. “The terms of the statute are absolute, explicit and peremptory; no discretion is given. They are designed to secure the secrecy and purity of the ballot, are mandatory in their character and binding upon the electors.” *State ex rel. Hanson v. Wilson*, 113 Wash. 49, 52 (1920).

**Voting: A Fundamental and Cherished Liberty**

“Voting is one of the most fundamental and cherished liberties in our democratic system of government.” *Burson*, 504 U.S. at 213 (Kennedy, J., concurring).

**Secretary of State may not compromise the vote**

This writ calls for institution of an unbroken bipartisan chain of custody immediately.

Chain of Custody in Washington State law is defined as:

"Chain of custody" means the documentation of the succession of offices or persons who held public records, in a manner that could meet the evidentiary standards of a court of law until their proper disposition according to an approved records retention schedule.

The agency must maintain chain of custody of the record, including employing sufficient security procedures to prevent additions, modifications, or deletion of a record by unauthorized parties. If there is a break in chain of custody, it must be noted in the transmittal to the archives. WAC 434-662-060. Authentication and chain of custody of electronic records.

The Washington Supreme Court in *Campbell* states regarding chain of custody and the Rules of Evidence:

[8] Before a physical object connected with the commission of a crime may properly be admitted into evidence, it must be satisfactorily identified and shown to be in substantially the same condition as when the crime was committed. *Brown v. General Motors Corp*., 67 Wn.2d 278, 285, 407 P.2d 461 (1965); *Gallego v. United States,* 276 F.2d 914, 917 (9th Cir.1960). Factors to be considered "include the nature of the article, the circumstances surrounding the preservation and custody of it, and the **likelihood of intermeddlers tampering with it**." *Gallego*, at 917. *State v. Campbell*, 691 P. 2d 929 - Wash: Supreme Court 1984 at ¶8. (Emphasis added).

**Unmistakable proof of the “likelihood of intermeddlers”**

As discussed above, Petitioner has shown by substantial evidence that a “likelihood of intermeddlers” exists in the current voting system in its inability to preserve an unbroken chain of bipartisan custody.

The current election practices are markedly out of synch with the statutes. The system is highly vulnerable to “intermeddlers” and therefore does not insure an unbroken bipartisan chain of custody. Remarkably, mail-in ballots are not counted by a bipartisan group in each county, external to ‘any machines’, or verified in any non-machine statistical bi-partisan human observable manner, which should then hand deliver the vote tallies to the State tabulator in order to maintain an unbroken chain of custody.

**Conclusion & RemedIES**

The voting process must enable an unbroken bipartisan chain of custody.

Therefore, the citizens of the State of Washington have no adequate remedy for the incurable uncertainty that exists currently in the current voting system. Therefore, Petitioner requests that the Secretary of State immediately:

1. Stop all involvement by Microsoft, at least until their involvement can be assessed and certified as honest by a properly constituted bipartisan group;
2. Verify the identity and qualification of each person who presents themselves to vote through a bipartisan group;
3. Stop using electronic voting machines immediately;
4. Establish bipartisan groups at each location where mail-in votes are counted. (How identities are confirmed is highly suspect with mail-in. Voters need to physically show up to vote and have their thumbs inked unless they are unable to for legitimate reasons);
5. Implement the process by which the bipartisan group vets each voter for his or her authority to vote;
6. Enable each bipartisan group to count each verified ballot and prepare a tally sheet that will be certified by the bipartisan group;
7. Enable the bipartisan group to photograph and post the certified tally sheet on the county’s website immediately upon the certification;
8. Provide the address and directions for the bipartisan group to drive to the state tabulator to report their tally sheet; and
9. Enable the bipartisan group to be able to verify that their tally sheet results are faithfully entered into the State tabulator.

Respectfully submitted,

/S/ James M. Miller

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| James M Miller, Citizen Petitioner  1 Blue Sky Place  Omak, WA 98841  (425) 471-8101  jmiller@leader.com  August 6, 2018 |

**VERIFICATION**

I, James M. Miller, being of sound mind and body do hereby affirm that information in this writ is true and accurate to the best of my knowledge and ability, including my attestations as a process control expert. *See* **Exhibit L**.

/S/ James M. Miller

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James M. Miller

/S/ Notary Signature & Stamp on File

SWORN AND SUBSCRIBED before me, a Notary Public, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

**Exhibit A**  
Laurie Thomas. (Jun. 8, 2018). James Miller signed response 6-8-18001.   
Okanogan County Auditor.

**Exhibit B**  
Brenda Galarza. (Jun. 29, 2018). PDR #18H-165 Public Records request for electronic voting procedures. Office of the WA Secretary of State, Elections Division.

**Exhibit C**  
Ron Wyden et al. (Jun. 12, 2018). Proposed Amendment to the Help America Vote Act of 2002. 115th Congress, 2d Session. U.S. Senate.

**Exhibit D**  
Jay Inslee. (Jul. 19, 2018). Letter to President Donald Trump. WA State Governor's Office.

**Exhibit E**  
Kim Wyman. (Accessed Aug. 03, 2018). Election Machine Inventory, SOS website.   
Washington, Secretary of State.

**Exhibit F**  
Angela Gunn. (Nov. 01, 2006). Who's building the gear that's running the show? Computerworld.

**Exhibit G**  
Anonymous Patriots. (Jul. 06, 2018). Scrap Electronic Voting Machines NOW!   
*Americans for Innovation*.

**Exhibit H**  
Phillip A. Brooks, (Sep. 18, 2015). Re. Notice of Violation, Volkswagen Software Hack To Modify Test Conditions Automatically. United States Environmental Protection Agency.

**Exhibit I**  
Ron Wyden. (Jul. 17, 2018). Wyden: Paper Ballots and Audits are Essential to Secure American Elections Against Foreign Hackers. Ron Wyden.

**Exhibit J**  
Kim Zetter. (Jul. 17, 2018). Top Voting Machine Vendor Admits It Installed Remote-Access Software on Systems Sold to States. *Motherboard*.

**Exhibit K  
  
OKANOGAN County Election Procedures**

These documents are too voluminous, and will therefore be made available upon request pursuant to Wash. R. Evid. 1006 and related rules.

1. Public Records available upon request from Okanogan County Auditor
2. Basic Instructions
   1. 10-03 Clearinghouse Judicial Elections and Exceptions 2010.pdf
   2. Election Emergency Procedures.doc
   3. Good Vote Bad Vote Poster 2.pdf
   4. Instructions - Preparing Notice of Election.docx
   5. Observer's Guide.pdf
   6. Seal Logs.doc
3. Misc. Instructions
   1. After Election
      1. Mail merge for after certification.doc
      2. BN Instructions scan and resolve.doc
      3. Test Election Database.docx
   2. Ballot now
      1. BN Instructions scan and resolve.doc
      2. Test Election Database.docx
4. Ballots
   1. 1 Extract, Upload ballot, print labels, and voter list - updated.docx
   2. Checking ballots back from the printer. docMail
   3. Certification to OSOS.docx
   4. Placement of issue and offices on ballot.doc
   5. Preparing to print envelopes.doc
5. Canvass Board
   1. Ballot to Canvass Board log.doc
   2. Ballots to Canvass Board Master.doc
   3. Canvass.docx
   4. Certify.docx
6. Inspection Boards
   1. WAC 434 Ballot inspection.doc
7. Voter Registration
   1. List of Voters for each election.doc
8. Voting equipment – HART
   1. Processing of ballots as defined in WAC 434.doc
9. WEI
   1. Set candidate statement word length WEI.docx
   2. Testing MyBallot.doc
   3. Turn on MyBallot Ballot Status for UOCAVA Ballots.doc
   4. WEI Candidate filing.pdf
   5. WEI election results Ballots left to count.docx
10. Procedure manual
    1. 10 Elections Department Policy Placement on ballot.pdf
    2. 10-03 Clearinghouse Judicial Elections and Exceptions 2010.pdf
    3. Canvass Board Manual.pdf
    4. Instructions for BOSS Setup.docx
    5. New Procedures Canvass Board 2017.doc
    6. Placement of issue and offices on ballot.doc
    7. Procedures 1 - Voter Registration.doc
    8. Procedures 2 - Election Envelopes, Inactive, Special ballots.doc
    9. Procedures Canvass Board 2017.doc
    10. Procedures Canvass Board 2017.pdf
11. Votec Instructions
    1. Ballot Log.doc
    2. Ballots returned undeliverable.doc
    3. Ballots that need proof of ID.doc
    4. Ballots that were forwarded and you got a notice from the Post Office.doc
    5. Candidate Filing.doc
    6. Candidate Module 1.doc
    7. Candidate Module.doc
    8. Change Notice Letters.doc
    9. Change status of voter from Inactive to Active.doc
    10. Checking signatures.doc
    11. Create an absentee list to be emailed.doc
    12. Election night issue ballots.doc
    13. Election Setup.doc
    14. Get totals of ballots sent and ballots returned.doc
    15. Getting totals of ballots in and out for an election.doc
    16. Handle duplicate registrations.doc
    17. How to get a list of voters with DLV.doc
    18. Inactive Purge.doc
    19. Issuing a ballot over the counter.doc
    20. List of return ballots.doc
    21. Lists of ballots in.doc
    22. Move winning candidates forward from Primary to General - Copy.doc
    23. New registrations after the initial loading of ballots that are in By Mail Precincts or Request Ongoing Ballots.doc
    24. Non ID compliant purge.docx
    25. Odd year preparation.docx
    26. Preparing for an election with State VRDB.doc
    27. Print Mailing Label Dymo for envelope Non ballot.doc
    28. Printing a Precinct with District List.doc
    29. Printing the report of previous registrations.doc
    30. Procedure changes.doc
    31. Process Exceptions.docx
    32. Provisional Ballots.doc
    33. Public Instruction for ballots that were forwarded, and you got a notice from the Post
    34. Offic1.doc
    35. Registration Totals for an election.docx
    36. Remove cancelled voters from election.doc
    37. Report number of ballots requested and received.doc
    38. Update or change Elected Officials list.doc

mm. Update voters who voted a Provisional Ballot.doc

nn. Upload ballot print labels, and voter list.docx

oo. Use of Disabled Access units.doc

pp. VOTEC Candidate File.docx

qq. Voter Stats.docx

rr. When an incorrect serial number was entered, and the wrong person was updated.docx

ss. Using DAU unit.doc

1. 2008 Instructions
   1. New resolve instructions 2008.doc
   2. New Scan instructions 2008.doc
2. Ballot Now
   1. 2012 Ballot Scanning - Resolution - Boards .doc
   2. BACK UP VOTING SYSTEM.doc
   3. Ballot Now Sequential Steps to start up.doc
   4. Print ballot images for the Printer.doc
   5. Write-Ins.doc
3. Instructions for Tally
   1. Finalize Tally after Election Certification.doc
   2. Set up new election database.doc

**Exhibit L**  
James M. Miller. (August 5, 2018). Professional Experience and Resume.

**Exhibit M**

Kim Wayman. (Accessed Aug. 06, 2018). System Security. Washington Secretary of State Website. <https://www.sos.wa.gov/elections/system-security.aspx>

**Exhibit N**

Don Reisinger. (Oct. 17, 2017). This Website Graded Apple, Google, Amazon, Microsoft, and Samsung on Their Political Leanings. *Fortune*.

Staff. (Accessed Aug. 06, 2018). Our Supporters. Center for American Progress.

**Superior court**

**okanogan county**

**CERTIFICATE OF SERVICE**

I, James M. Miller, hereby certify that on August 6, 2018 a true and accurate copy of the foregoing WRIT OF MANDAMUS was served upon the Washington Secretary of State’s designated service officer Brenda Galarza, Records/Public Disclosure Officer, Office of the Secretary of State Kim Wyman, 801 Capital Way South, Olympia, Washington 98501, (360) 704-5220, brenda.galarza@sos.wa.gov.

/S/ James M. Miller

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| --- |
| James M Miller, Citizen Petitioner  1 Blue Sky Place  Omak, WA 98841  (425) 471-8101  jmiller@leader.com  August 6, 2018 |

1. Ramsey Touchberry. (Jul. 17, 2018). Election Hacking: Voting-Machine Supplier Admits It Used Hackable Software Despite Past Denials. *Newsweek*. <https://www.newsweek.com/election-hacking-voting-machines-software-1028948> [↑](#footnote-ref-1)
2. Senator Ron Wyden. (Jul. 11, 2018). Wyden: Paper Ballots and Audits are Essential to Secure American Elections Against Foreign Hackers. Ron Wyden. <https://youtu.be/XQzsoJSAtA4> ; *See* also <https://www.wyden.senate.gov/news/press-releases/wyden-paper-ballots-and-audits-are-essential-to-secure-american-elections-against-foreign-hackers> [↑](#footnote-ref-2)
3. Staff. (Jun. 12, 2008). SEQUOIA VOTING SYSTEMS, INC. USES VOTE-COUNTING SOFTWARE DEVELOPED, OWNED, AND LICENSED BY FOREIGN-OWNED SMARTMATIC, A COMPANY LINKED TO THE VENEZUELAN GOVERNMENT OF HUGO CHÁVEZ. National Institute of Standards (NIST). <https://www.nist.gov/sites/default/files/documents/itl/vote/SequoiaSmartmaticReport61208.pdf> [↑](#footnote-ref-3)
4. Kim Wyman. (Jul 16, 2018). Protecting Our Votes Means Strengthening Cybersecurity. The Aspen Institute. <https://www.aspeninstitute.org/blog-posts/protecting-our-votes-means-strengthening-cybersecurity/>; *See* also Kim Wyman. (Mar. 29, 2018). Washington to receive nearly #$8 million to upgrade elections systems. Washington Secretary of State. <https://www.sos.wa.gov/office/news-releases.aspx#/news/1280> [↑](#footnote-ref-4)
5. Hacking Democracy (2006). The Hack Trailer. *HBO*. <https://youtu.be/t75xvZ3osFg> [↑](#footnote-ref-5)
6. Exh. M. Kim Wayman. (Accessed Aug. 06, 2018). System Security. Washington Secretary of State Website. <https://www.sos.wa.gov/elections/system-security.aspx> [↑](#footnote-ref-6)
7. Exh. N. Don Reisinger. (Oct. 17, 2017). This Website Graded Apple, Google, Amazon, Microsoft, and Samsung on Their Political Leanings. *Fortune*; See also Staff. (Accessed Aug. 06, 2018). Our Supporters. Center for American Progress. [↑](#footnote-ref-7)