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GORDON A. LIVENGOOD (1921 - 2001)

October 3, 2006

Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463

2006 OCT -3 P 12:00

Via facsimile 202-208-3333

Re: AO 2006-24 / Recount Funds

Dear Commissioners:

I am the general counsel of the Washington State Republican Party ("WSRP") Because of the short time available to submit comments on this matter, I am writing as an individual and these comments do not reflect an official position of the organization. Washington has substantial recent experience with recounts in federal and non-federal elections, and these comments on Draft AO 2006-24 are submitted in light of that experience.

In 2000, the election for United States Senate in Washington state was decided only after a recount. State law triggered the recount automatically based on the narrow margin in the initial count. The outcome of the election did not change in the recount. The recount was conducted under intense national scrutiny because a change in outcome would have affected control of the U.S. Senate.

In 2004, the election for governor of Washington was decided in the initial count by 261 votes out of 2.8 million cast. Under state law, this triggered an automatic recount, after which the margin was 42 votes. The outcome of the election did not change in the automatic recount. State law allowed a candidate to request a second recount, upon payment of a deposit to cover its full cost. The Washington state Democratic Party, on behalf of the Democratic candidate, paid a deposit of $750,000 to bring about a second recount. That recount did change the outcome of the election, with the Democratic candidate winning by a margin of 129 votes.

Based on the applicable law, as discussed in Draft B, and on Washington's experience, I urge

the Commission to adopt Draft B as its opinion in this matter. The draft's legal analysis on the key interpretive issue, that recounts are not included in the Act's definition of "election," speaks for itself and I endorse it.

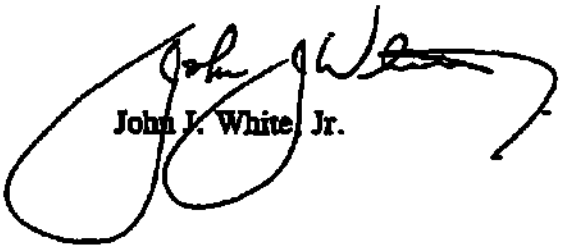
The Commission should adopt Draft B because it is more consistent with the practical realities of conducting recounts, especially for statewide office. Donations to a recount fund are not used to influence voters' decisions about whether to vote or for which candidate they cast their ballot. Thus, Draft B does not undermine the Act's policy of insulating unlimited contributions from affecting voters' election decisions. At the same time, Draft B advances the important public policy goal of assuring accurate tallying of votes. Recount funds, instead, are used to ensure that every ballot that was legitimately cast is counted, and counted accurately and in accord with state and federal law.

Draft A would greatly impair, and perhaps render impossible, the ability to conduct recount efforts in Washington. Recounts efforts and their financing differ from election activities in their timing. Candidates for office often spend a year or more raising the money they need to conduct a campaign. In the event of a recount, there may be only a matter of a few days from learning a recount will happen until it begins. For example, in our 2004 election, the first recount began 3 days after the initial results were certified. When the results of the first recount were complete, the parties had only 9 days to decide whether to request a second recount and to raise the $750,000 required to obtain it, and the recount began 5 days later. Neither party was able to raise the funds it needed for the recount activities in amounts that were within the federal limits. Therefore, application of the federal limits to recount funds could prevent a candidate or party from securing a recount to ensure that votes were counted properly.

For these reasons, the Commission should adopt Draft B as the Commission's final opinion in this matter.

Very truly yours,

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC



John J. White, Jr.

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