

January 20, 2022

To: Jennifer Hansen

From: William Campbell

RE: PDC Case Number 115649

PDC Case Number 115649 documents a complaint that alleges violation of RCW 42.17A.205, .235, & .240 when a group of six registered voters requested a manual recount for the November 8, 2022 Kitsap County Sheriff race in accordance with RCW 29A.064.011.

RCW 29A.064.011 required the recount request to be filed within two business days after the county canvassing board certified the election on November 29, 2022.

RCW 29A.64.030 required a deposit of \$31,060.50 in cash or certified check when the recount request was filed.

RCW 29A.64.081 includes a requirement for me, as the applicant, to pay any costs of the recount that exceed the deposit. However, RCW 29A.64.041 gave me the option to stop the recount at any time and the auditor graciously agreed to keep me informed on the accumulating charges during the recount.

After the recount was complete, I generated the following report:

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## **Observer Report of Kitsap County Sheriff Race Recount**

### **Conducted December 12, 2022 – December 20, 2022**

The results of the Kitsap County Sheriff's Race manual recount were certified by the Canvass Board on December 27, 2022. The recount changed six votes that were originally adjudicated as under votes or over votes and thus were not counted for either candidate. Of the six votes that changed, Rick Kuss gained five votes and John Gese gained one vote. No votes were changed from one candidate to the other.

Instructions on how to vote are printed on each ballot. The voter is instructed to use dark blue or black ink to fill in the block to the left of the preferred choice. The voter is told that if more than one choice for a race is marked then no vote will be counted for that race. To correct a mistake, the voter is instructed to draw a line through the incorrectly marked choice then another choice can be made. These instructions are both written and shown graphically.

The instructions provided with the ballot are the simplest and most easily understood methods of casting and correcting a vote. If the voter marks the ballot differently than directed but the intent can be discerned, then the vote will be counted. The Washington Secretary of State issued a manual for determining voter intent that is used by the Kitsap County Elections Department. (The 2018 version can be viewed at the following link: [https://www.sos.wa.gov/assets/elections/administrators/2018\\_voter-intent\\_web.pdf](https://www.sos.wa.gov/assets/elections/administrators/2018_voter-intent_web.pdf) )

Specific adjudication details of the six changed votes from an observer perspective are provided in the following table.

Precinct	Original Count	Recount	Description	Voter Intent Manual Guidance
58	Undervote	Kuss	Small dot marked in the center of the target area. No other races or markings on that side of the ballot. Races on the other side of the ballot were marked per ballot directions	Rule B, Example 4a Rule B, One Mark on a Ballot
427	Overvote	Kuss	Blocks for both candidates filled in. The block for Gese had a horizontal strikethrough that extended less than 1/8 inch on either side of the block.	Rule C, Examples 4a-b
441	Undervote	Kuss	Write-in for Kuss. None of the blocks filled in.	Rule I Rule M, Example 1b
257	Undervote	Kuss	Scan error? The block filled in for Kuss was a lighter shade than the blocks filled in for other races on the ballot. The auditor retrieved the scanned image that the tabulator used to count the votes and found that the scanned image had no marking in the sheriff race.	Rule A, Example 3b
125	Undervote	Kuss	Tabulator error? Votes were counted multiple times. The auditor reviewed each ballot marked for Kuss and could not detect a discrepancy on any ballot that might cause the scan to miss the vote. The ballot with the vote not counted by the tabulator was consistently marked for all races. The scanned image showed the blocks were filled with tiny spirals that left white dots throughout the scan area. Other votes on the ballot marked in the same manner were counted by the tabulator.	Rule A
455	Undervote	Gese	Scan or Tabulator error? Votes were counted multiple times. Each ballot marked for Gese was reviewed by several senior election department staff members that did not detect a discrepancy on any ballot that might cause the scanner or tabulator to miss the vote. The elections Manager performed a final review and identified the most probable ballot to be tabulated as an undervote. This ballot was confirmed to have been counted as an undervote by the tabulator. I did not observe the marked ballot nor the scanned image that the system counted as an undervote.	Rule A

The chain of custody was observed and no discrepancies identified during the recount.

After the ballots were scanned for the November 8, 2022 general election, the ballots were stored in cardboard containers that are individually sealed with a serialized tag that can only be destructively removed. Either the box or the seal must be cut to open the box of ballots. Prior to sealing the box the seal number is recorded on a form that is then signed by two elections department workers who then insert the signed form inside the box and seal the box shut.

The ballots are always in the custody of at least two elections department workers until they are locked in storage. Access to the sealed boxes in the storage area is through three locked doors/gates. The first access point is a door with badge access by county employees into the shared storage area used by multiple departments. The second access point is a gate into an area defined by chain link fencing from floor to ceiling and secured by a combination padlock. The combination is only known by some of the election department staff. The third access point is a gate into a small chain link storage area that is secured with a keyed padlock. Access to the key is controlled by the elections department. Elections department procedures require two elections department staff members to be present when the inner gate giving access to the stored ballots is unlocked. A security camera and motion detector monitor the two chain link gates.

Our goal during the recount was to observe that the chain of custody of the ballots was unbroken throughout the recount process. An observer was with the two election workers every time ballots were moved in or out of the storage area. We can say with certainty that the ballots were transported between the counting area and the storage area with no detours and thus there was no opportunity for tampering during the transfer.

The ballots were stored by consolidated precincts after the election. The first step for the recount was to sort the ballots by precinct. Completing this step took four days. As the ballots for each precinct were sorted during this process, they would be sealed in the storage boxes as described above and then returned to the secure storage area. At the end of each day some of the sorting was incomplete. The ballots that were still in the sorting process were kept in trays that were loaded on portable racks that were sent with an observer to the secure processing room in the elections department. The room is secured with a badge reader that requires two elections department workers to scan their badges to open the lock. After the racks of in-process ballots were locked in the room a serialized security seal was placed on the door. An observer photographed the seal when it was installed in the evening and again just before the seal was broken in the morning. All the photographs matched indicating the room remained sealed throughout the night, every night.

The ballots were all sorted by precinct at the end of the fourth day of the recount.

The morning of the fifth day the count of the votes cast in the sheriff race began. The consolidated precinct order of the recount was determined by random drawing to be CP9, CP5, CP1, CP4, CP2, CP7, CP6, CP8, and finally CP3. The order of the precincts counted within the consolidated precinct was also random, but was not in any specified order.

Multiple teams of two workers were assigned to count the votes. There are two fundamental steps to accomplish the manual count of the votes cast in each precinct. First the ballots were separated into three groups, one with votes for Rick Kuss, one with votes for John Gese, and one for any other type of vote (undervote, overvote, and write-in). Next each stack of ballots was counted individually by each of the two people on the counting team.

Each counter recorded the number of ballots in each of the ballot stacks on a temporary tally sheet without disclosing their count to their teammate. When both counters were finished the tally sheets were given to an Election Department staff member who compared the tally sheets. If the tally sheets did not match the team repeated the counting process. If the tally sheets did not match the second time the ballots for that precinct were given to a different counting team and the process was repeated.

When a team of counters had matching tally sheets the sheets were delivered to the Elections Supervisor. The tally was then compared with the original count from the general election. If the original count and the manual recount matched then the tally sheets were returned to the counting team along with a certification sheet. The workers transcribed their tally to the certification sheet and both certified by signature on the sheet that the tally was true and correct. This document is the official election result for that precinct.

If the Election Supervisor received temporary tally sheets where the general election count and the manual count differed, then the counting process was repeated to double check the accuracy of the manual recount. This process resulted in identifying and scrutinizing the six votes that were changed by the manual recount.

The manual recount process affirmed the adjudication process of the Kitsap County Elections Department used in the general election. To accomplish a hand recount every single ballot is manually adjudicated. Three of the votes that changed can be attributed to adjudication errors (Precincts 58, 427, & 441). Each of these changes involved discussions and review of the Voter Intent Manual to make the final determination during the manual recount and, as an observer, I have confidence that these votes will be examples in future adjudication training done by the Elections Department.

One posited theory of a way to commit election fraud is that the tabulator has an adjudication feature to allow groups of votes to be adjudicated with a single keystroke. There was no evidence of wholesale adjudication of votes during the general election. Other than the three exceptions discussed above, any scanned image adjudicated during the general election was adjudicated the same way when two people looked at the paper ballot during the hand count.

So, what did the manual recount accomplish? I personally have a few responses to that question and I am sure others do as well. When I worked as an engineering supervisor and a complicated system would malfunction there would sometimes be days when we checked for specific problems and would not be able to find anything wrong. Each day I would encourage my engineers, telling them that we were making good progress because knowing where the problem is not tells us a little bit more about where the problem is.

Our government is a constitutional republic that was handed down to us. I believe our election system is a figurative wall that is an element of our protection from tyranny. I am guilty of many years of complacency and, until now, have not personally done anything to be sure our election system is not deteriorating or even worse, crumbling.

In the Old Testament the Bible tells of a time when the nation of Israel suffered a military defeat. The people of the nation were taken captive and forcefully sent to a land far from their homes. After many years the people were allowed to return to their homeland, but their homes had been unoccupied and had fallen into disrepair. The walls around the city had crumbled leaving large gaps in many places so the people were vulnerable to hostile groups living in the surrounding area. To restore their defensive perimeter, every person was assigned the task of rebuilding the section of wall where they lived.

This account from the Bible teaches me that it is my job to check, maintain and, when necessary, be actively involved in repairing damage to any of the infrastructure that provides protection for me, my family, and my community.

The hand recount of the Kitsap County Sheriff Race was requested to get new information on the single issue of whether or not the Hart-Intercivic Tabulator used by the Kitsap County Elections Department is accurately tallying the votes that are cast.

I believe the recount request was unexpected by everyone. No political parties were involved in the request nor were they involved in the recount. Sheriff Gese won this contest with 58% of the votes so there was no political drama involved while conducting the recount. The race being recounted affects no one outside of Kitsap County and the outcome is tallied by a single elections department and tabulator system.

The recount gave us an opportunity to see the chain of custody remain unbroken. The ballots are sealed in boxes after tabulation during the election and stored behind three locks while monitored by a security camera and a motion detector. We were allowed and encouraged to observe the ballots being removed from storage and then to verify that there had been no tampering with the sealed boxes.

With only six votes changed out of 124242 ballots cast, my assessment is that the election results produced by the Hart-Intercivic tabulator of the Kitsap County Sheriff race are accurate. Of those six votes that were changed, three were not processed correctly by the scanner/tabulator system. Our Kitsap County Elections Department Staff is incorporating these ballots into election worker training as examples that require further review before being processed by the scanner/tabulator system. The Auditor and Elections Department management are also attending a statewide conference where these specific examples will be shared with the tabulator vendor and other elections departments.

The Kitsap County Auditor, the Elections Department Manager, the Elections Department Supervisor, and the Elections Department Staff were remarkably open and transparent throughout the recount process. I greatly respect their knowledge and expertise and am convinced they are conducting our elections as prescribed by the law.

/s/ William Campbell

Chairman

Group of six registered voters requesting recount in accordance with RCW 29A.64.011.

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It's hard to say when my interest and commitment to conducting this recount began but probably goes back to a lot of little things over many decades. The trigger for me to do this recount was that at some point after the election I learned that the Elections Department had conducted a random batch audit that was available to watch on the Kitsap County Auditor's website and on YouTube (<https://www.youtube.com/watch?v=2fm8XIYQSLQ&t=1379s>).

To conduct this audit, a random sample of ballot batches ready for processing was scanned and a report for the Kitsap County Sheriff contest was produced by the tabulator. The following day a hand count of these 413 ballots was performed and the result was 43% for John Gese and 55% for Rick Kuss. The audit was declared a success because the machine count matched the hand count. However, the statistical probability of a random sample of actual votes cast varying so dramatically from the election result of 59% for John Gese and 41% for Rick Kuss seemed unlikely to me and so my skepticism of the election process was elevated.

My introduction to the possibility of conducting the hand recount of the Kitsap County Sheriff race was via a social media post with a link to a GiveSendGo fundraising effort for the recount (<https://www.givesendgo.com/RecountKitsap>) that I saw a day or two before Thanksgiving. The fundraiser description was fairly short at that time and stated that the end goal was not to overturn the election results, merely to trust but verify them.

I provided my contact information to the person that had posted the link and expressed my desire to provide a donation to the recount effort without using a credit card so that the full amount of the donation would be used to fund the recount.

The following Monday I was invited to a small gathering to discuss the possibility of requesting a recount for the Kitsap County Sheriff race where I was shown RCW 29A.064.011 and I agreed to be chairman of our group of six registered voters. With the Canvas Board scheduled to certify the election the next day we recognized that the required deposit could only be made using funds that were easily accessible to members of our group. I committed to a donation for about 10% of the deposit and agreed to provide an additional 60% hoping that it would be returned to me at some time in the future. The group agreed to produce the remaining 30% of the deposit. As a group we were aware of the GiveSendGo fundraising account and the possibility of using it to reimburse a portion of the deposit provided by members of our group. As chairman, I committed to preparing the written request for the recount and we adjourned.

Our group of six registered voters met again on the evening of November 30, 2022 to review the written recount request and to pool our cash for the accompanying deposit. At some point I became aware that about 30% of the deposit was funded from credit card loans and, out of personal conviction, returned that money and replaced it with my own funds.

On the morning of December 1, 2022 the written request for a hand recount of the Kitsap County Sheriff race was delivered to the Kitsap County Auditor along with the cash deposit. To the best of my knowledge, the group honored my request to take this action without notifying any media or political party.

The written request for the hand count is provided below:

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## **Written Request for Hand Count of Kitsap County Sheriff Race**

**30 November 2022**

To Whom it May Concern,

In accordance with RCW 39A.64.011, the undersigned registered voters in Kitsap County hereby apply for a manual recount of all votes cast in the 2022 General Election for Kitsap County Sheriff. The data we are seeking is only for the gross total, so we are requesting the recount for all precincts

The group has designated William Campbell as chair of the group.

The recount requested is similar to the random batch audit. Our request is to hand count the 124242 ballots to verify the certified results of the election. We understand the total cost will include handling the sealed containers with the ballots while maintaining chain of custody requirements. We have observed the random batch audit and note that two people counted and double checked approximately 400 ballots in 30 minutes.

We also understand that there will be some cost associated with setting up a room with sufficient space for the counting team and observers.

We also understand that there will be some cost associated with sealing each container after the count of that container has been completed.

We acknowledge receipt of an e-mail from Auditor Paul Andrews dated 30 November 2022 explaining that an amended abstract is required to be presented to the canvassing board after the count. We understand that this requirement necessitates sorting the ballots by precinct and that the costs associated with sorting the ballots is part of the requested recount.

The elections department of the Kitsap County Auditors Office is requested to perform the recount in a space large enough for observers and permission for representatives of both candidates to observe the count.

\_\_\_\_\_/s/

William B Campbell

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On December 5, 2022 someone recommended that I check in with the Public Disclosure Commission (PDC). My call was routed to a Filer Assistance Specialist who cheerfully advised me to register as a political committee and complete all the actions associated with filing as a political committee. The phone conversation was followed by an e-mail summarizing the information provided in our conversation with links to the appropriate web pages.

My first step in the process to register as a political committee was to review the PDC Political Committee FAQ page (<https://www.pdc.wa.gov/registration-reporting/candidates-committees/political-committee-faq>) to be sure that I understood the requirements.

The first FAQ on that web page is; "Which committees file disclosure reports?" The answer states that committees that raise and spend money to influence elections must register and report. My thought was that any money our group would raise or spend could not influence the election because it was certified. No more ballots could be cast in the election. In my opinion the posted PDC response to that question is quite clear that our group was not required to file a political committee report.

The second FAQ on the web page is; "What starts the whole process?" The answer states we would become a political committee when we first expected to receive contributions or spend money in support of or opposition to any candidate. Similar to the first question, we were planning to spend money to pay the county elections department to count the votes that had already been cast in a certified election. Counting the votes that have already been cast is a neutral activity that is neither in support of nor opposition to either candidate.

The third FAQ on the web page is; "When does a committee register?" The answer provides two options that depend on how long **before** the election the political committee is organized. If it's more than three weeks before the election then the filing deadline is two weeks after the organization becomes a committee. If it is less than three weeks before the election then the filing deadline is three business days after the organization becomes a committee. Our group of six registered voters was formed more than three weeks **after** the election. Neither of these published deadlines are applicable to our group.

All these answers in plain English to me mean our group does not meet the definition of a political committee and therefore none of the filing requirements apply. However, I understand that whatever is written in the law as interpreted by the courts supersedes any plain English translation. That evening I responded to the Filer Assistance Specialist with a condensed version of the three FAQs above and asked that the advice to have our group register as a political committee be re-evaluated.

Seven business days later (December 14, 2022) when the recount was nearly half completed the Filer Assistance Specialist responded that funding recounts is a campaign activity normally funded by candidates or political parties and is disclosed through reports to the PDC. If a group other than the candidate or party is funding the recount, it would need to register a political committee and report the activity.

I then requested that the portion of the law used to make that determination be provided. The response, that I did not see until the following day after the recount was complete, was based on RCW 42.17A.005(41) which states: "Political committee" means any person (except a candidate or an individual



dealing with the candidate's or individual's own funds or property) having the expectation of receiving contributions or making expenditures **in support of**, or opposition to, **any candidate** or any ballot proposition."

In my mind, this RCW excerpt repeats the information that was provided on the FAQ web page and circles back to my original point that by definition, a group formed after an election for the sole purpose of counting the votes that were certified to have been cast in that election, and is raising funds for the sole purpose of paying the neutral county election department to perform the recount can be neither in support of, nor opposed to anything on the ballot.

I can understand how historical examples of funding recounts have been considered a normal campaign activity that gets reported because the organization providing the funds would normally have been formed prior to the election for the purpose of supporting or opposing something on the ballot. Then all the conditions to file as a political committee clearly apply. I do not understand the logic assertion that because recounts are normally funded by campaigns or political committees then any organization requesting a recount, regardless of when or for what purpose it was formed, must register as a political committee.

I responded to the Filer Assistance Specialist, attempting to articulate that we had not yet come to a mutual understanding concerning the formation of the group of six registered voters that requested the recount and that I did not yet understand the logic or how the provided RCW excerpts clearly required me to register our group as a political committee.

The next communication I received from the PDC was the notification that a complaint had been received on December 26, 2022 and stated that the complaint alleges the following:

- **Allegation One: Alleged violation of RCW 42.17A.205 for failure to register as a PAC**
- **Allegation Two: Alleged violation of RCW 42.17A.235 & .240 for failure to disclose contribution and expenditure information on C3 and C4 reports**

When I read the complaint prepared by the Complainant, it seemed to be focused more on PDC staff processes than on anything I had failed to do. However, I did eventually notice that in the section of the complaint form for listing attached evidence, the Complainant states that according to the article from the Kitsap Sun attached to the complaint, the "respondent did not register committee." Based on that entry I understand how Allegation One is based on the complaint filed.

I understand how Allegation Two follows from Allegation One in that if a group is not registered as a political committee then there is no mechanism to file financial reports for the group. It is helpful for me to know that if I am in error for not registering as a political committee, then when I do register I will need to file financial reports. However, until Allegation One is resolved it seems that Allegation Two is premature.

Concerning Allegation One. As chairman of the group of six registered voters that requested a recount of the Kitsap County Sheriff Race in the November 8, 2022 General Election in accordance with RCW 29A.64.011, I acknowledge that the group is not registered as a political committee and do not believe the group fits the “political committee” definition of RCW 42.17A.005(41) because we had no expectation of receiving contributions or making expenditures either supporting or opposing any candidate on the ballot as discussed above. Therefore, RCW 42.17A.205 requirements to register as a political committee should not apply to our group.

Concerning Allegation Two. As chairman of the group of six registered voters that requested a recount of the Kitsap County Sheriff Race in the November 8, 2022 General Election in accordance with RCW 29A.64.011, I acknowledge that the group did not disclose contribution and expenditure information on C3 and C4 reports because we did not register as a political committee because I do not believe the group fits the “political committee” definition of RCW 42.17A.005(41) because we had no expectation of making expenditures either supporting or opposing any candidate on the ballot as discussed above. Therefore, RCW 42.17A.235 & .240 requirements to disclose contribution and expenditure information on C3 and C4 reports should not apply to our group.

Respectfully,

/s/

William B Campbell

Chairman

Group of six registered voters requesting recount in accordance with RCW 29A.64.011.