

October 27, 2016

Kevin J. Hamilton
KHamilton@perkinscoie.com
D. +1.206.359.8741
F. +1.206.359.9741

BY EMAIL TRANSMISSION AND U.S. MAIL
pcauditor@co.pierce.wa.us

Ms. Julie Anderson
Pierce County Auditor
2401 S. 35th Street
Tacoma, WA 98409

Re: Violation of RCW 29A.40.091

Dear Ms. Anderson:

We represent the Washington State Democratic Central Committee (“Washington Democrats”). I write to express our grave concern over Pierce County’s distribution of inaccurate and misleading information concerning the upcoming 2016 General Election in direct violation of Washington law. In order to protect the franchise and encourage maximum participation in this important democratic process, we ask you to immediately and publicly correct these errors.

As you surely know, the date of the General Election is November 8, 2016, and Washington law unambiguously provides that ballots may be mailed up to and including November 8. Your printed instructions to voters that they must mail their ballots by November 4 is simply wrong and in direct contravention of your duty under state law to properly “instruct” Washington voters.

With respect to the date by which ballots cast by mail must be postmarked, Washington law is clear. *“The voter must be instructed to either return the ballot to the county auditor no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the county auditor with a postmark no later than the day of the election or primary.”* RCW 29A.40.091(4) (emphasis added). Then, “[t]he canvassing board, or its designated representatives, shall examine the postmark on the return envelope and signature on the declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. RCW 29A.40.110(3) (emphasis added). Pierce County, accordingly, had a clear and unambiguous duty to instruct its voters that mail ballots can be postmarked up to and including Tuesday, November 8, 2016, the

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date of the General Election, and that Pierce County must accept any such properly cast and postmarked ballot.

Notwithstanding this plain legal obligation, over the last week, Pierce County has repeatedly disseminated communications in violation of well-settled Washington law. The Pierce County Voters Pamphlet and an instruction sheet included with each of the 484,000 ballots distributed to Pierce County voters instructed voters to “Mail by November 4 (Stamp required).”

There is no excuse for Pierce County’s violation. First and most importantly, Washington law requires that Pierce County must “instruct” voters to return ballots cast by mail by November 8, the date of the election. RCW 29A.40.091(4). November 4 is not November 8. Second, while it might be appropriate to pass along Postal Service suggestions or even warn voters about Postal Service understaffing, the Postal Service does not determine the date by which mail ballots must be postmarked. The Revised Code of Washington does, and it sets the date at November 8, not November 4. Last, while we share your interest in encouraging meaningful participation in the process, according to Pierce County’s own election data, in the last several elections, Pierce County received and accepted tens of thousands of votes that were postmarked during the three days preceding the election or on election day itself. Your stated interest in preventing late votes from several thousand voters thus threatens to disenfranchise many more Pierce County voters.

That, of course, is the real harm we are trying to prevent. As you know, “[i]t is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud.” RCW 29A.04.205. Your failure to properly instruct Pierce County voters of the deadline for mailing ballots jeopardizes this guiding principle.

For these reasons, we must insist that you immediately take the following actions:

1. By no later than November 1, 2016, send a supplementary mailer to every registered Pierce County voter, which clearly states that ballots may be postmarked up to and including November 8, 2016;
2. By no later than October 28, 2016, clearly and conspicuously post the correct deadline of November 8, 2016, on the Pierce County Auditor’s website and social media pages; and
3. By no later than October 28, 2016, issue a press release clarifying that the correct deadline is November 8, 2016, and post this press release on the Pierce County Auditor’s website.

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If you are unwilling to agree to these modest and reasonable steps to promote the franchise and protect the integrity of the election, my client intends to seek a court order requiring you to immediately comply with the law.

Very truly yours,



Kevin J. Hamilton

KJH:cma

cc: Mark Lindquist, Pierce County Prosecutor
Kim Wyman, Washington Secretary of State