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IN THE SUPERIOR COURT OF KING COUNTY, STATE OF WASHINGTON

<p>PAUL LEHTO, individually, JOHN WELLS, individually;</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>SEQUOIA VOTING SYSTEMS, INC. and SNOHOMISH COUNTY;</p> <p style="text-align: center;">Defendants.</p>	<p>NO.</p> <p>COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF</p>
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Plaintiffs Paul Lehto and John Wells, by and through their attorney, Randolph I. Gordon of GORDON EDMUNDS ELDER, PLLC hereby allege and state as follows:

I. INTRODUCTION

1.1 This case arises out a dispute concerning a contract between defendants Snohomish County and Sequoia Voting Systems, Inc. for the purchase of Sequoia touch-screen voting computers employed in the 2004 elections (hereinafter “the Contract”). The Contract is appended hereto as Appendix ‘A.’ Plaintiffs make claims under the Uniform Declaratory Judgments Act [RCW 7.24.010 *et seq.*] for specific declarations respecting the Contract and its provisions and for such other and further relief as may be necessary or proper.

1.2 Plaintiffs Wells and Lehto, as citizens and voters, object to provisions of the

1 contract between Snohomish County and Sequoia Voting Systems, Inc. attempting to
2 shield from public view and verification the means by which votes are recorded, counted,
3 tabulated, and reported on the grounds that they contain “trade secret,” “confidential,” or
4 “proprietary” materials. Plaintiffs contend, among other things, that provisions of the
5 contract ought properly to be set aside based upon contractual, statutory, Constitutional
6 and public policy grounds.
7

8 1.3 This case implicates questions concerning the proper balance to be struck
9 between a free people and their government, recognizing the inherent tension between
10 appropriate delegation of regulatory and administrative functions respecting the conduct of
11 elections by the people to the agencies of their government, on the one hand, and the
12 danger that lack of transparent, accurate, and verifiable elections could undermine
13 accountability and lead to rule by self-perpetuating incumbents with the resulting damage to
14 our democracy, on the other.
15

16
17 1.4 Access to Sequoia Voting Systems, Inc. information is essential to insure the
18 transparency and verifiability of elections at the precise nexus of the exercise of the voting
19 franchise (vote counting) and the essential legitimacy of government (i.e. election results).
20 Accordingly, the court must apply strict scrutiny to all acts or contracts tending to impair the
21 right of the people to supervise and review their elections in order that public confidence is
22 sustained respecting the accuracy, integrity, transparency, and verifiability of voting systems.
23 Such scrutiny supports the public policy of Washington State, as stated in RCW 42.30.010:
24

25 The people of this state do not yield their sovereignty to the
26 agencies which serve them. The people, in delegating authority, do not
27 give their public servants the right to decide what is good for the people
to know and what is not good for them to know. The people insist on

1 remaining informed so that they may retain control over the instruments
2 they have created.

3 1.5 This action seeks to vindicate the proposition that no contract, public or private,
4 shall be permitted to undermine Article I, Section 1 of the Washington Constitution: “all
5 political power is inherent in the people”. Plaintiffs seek relief herein based upon past
6 damages sustained and the threat of future injury.

7 8 **II. IDENTIFICATION OF THE PARTIES**

9 2.1 Plaintiff John Wells is a natural person, a registered voter, a citizen of
10 Washington State and a citizen of the United States of America, residing in Snohomish
11 County, Washington.

12 2.2 Plaintiff Paul Lehto is a natural person, a registered voter, a citizen of
13 Washington State and a citizen of the United States of America, residing in Snohomish
14 County, Washington.

15 2.3 Defendant Snohomish County is a chartered county in the State of Washington
16 with its county seat located in Everett, Washington. Snohomish is a county government
17 duly and validly organized and existing under the Laws of the State of Washington.

18 2.4 Snohomish County is duly authorized to own properties to perform municipal
19 functions, including but not limited to, elections.

20 2.5 Defendant Sequoia Voting Systems, Inc. (hereinafter “Sequoia”) is a Delaware
21 corporation with its principal place of business in California, and a provider of computerized
22 automated election systems.

23 2.6 Sequoia became registered to do business in the state of Washington as a
24 foreign corporation on January 24, 2003.

25 2.7 Sequoia’s registered agent in the state of Washington is CT Corporation,
26 located at 520 Pike Street, Seattle, King County, Washington 98101.
27

1 2.8 Because constitutional claims are raised, Rob McKenna, the Washington State
2 Attorney General, shall be and (as of the time the defendants’ answer this complaint) has
3 been provided with a copy of this Complaint pursuant to the provisions and procedures of
4 RCW 7.24.110.

5 **III. JURISDICTION and VENUE**

6 3.1 The Court has subject matter jurisdiction in this action pursuant to its inherent
7 jurisdictional powers, equity powers, power to supervise elections, and general jurisdiction
8 specified at RCW 2.08.010. .

9 3.2 By law, courts of record within their respective jurisdiction have power to
10 declare the rights, status and other legal relations of parties to lawsuits under the Uniform
11 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

12 3.3 In addition, in declaratory judgment actions, “further relief” may be granted
13 whenever necessary and proper pursuant to RCW 7.24.080.

14 3.4 The venue of this action (King County Superior Court) against Snohomish
15 County is governed by RCW 36.01.050 which provides that actions against any county may
16 be commenced in the superior court of such county, or alternatively in the Superior Court of
17 either of the two nearest judicial districts.

18 3.5 King County adjoins Snohomish County and King County Superior Court is in
19 one of the two nearest judicial districts.

20 3.6 Defendant Sequoia Voting Systems, Inc. (“Sequoia”) has a registered agent CT
21 Corporation in King County located at 520 Pike Street in Seattle, Washington 98101.

22 3.7 Service of process may be had, for example, upon Sequoia’s registered agent
23 in King County, Washington and, accordingly, venue is proper pursuant to Civil Rule of
24 Superior Court 82 [Venue] which provides: “An action against a nonresident of this state
25 may be brought: ... in any county in which service of process may be had.”
26

27 3.8 Defendant Sequoia Voting Systems, Inc. (“Sequoia”) has, directly and through

1 its agents, availed itself of the benefits of Washington State and engaged in the transaction
2 of business within Washington State, entered into contracts in the State of Washington with
3 Snohomish County, and has sold products in the State of Washington, with products and
4 personnel being shipped thereto on an ongoing and repeated basis.

5 3.9 On or about July 24, 2002, defendants Snohomish County and Sequoia
6 Voting Systems, Inc., entered into a contract for the purchase of approximately 1000 touch
7 screen voting machines, known as Sequoia AVC Edge touch screen voting machines,
8 which machines were delivered to Snohomish County for use in Snohomish County and
9 periodically serviced in Snohomish County.

10 3.10 Sequoia has submitted to long-arm jurisdiction under RCW 4.28.185, and
11 further has stipulated by contract to the jurisdiction of the Superior Court of the State of
12 Washington, with venue set in Snohomish County (Sequoia did not take advantage of the
13 statute at RCW 36.01.050 allowing suit in an adjacent county to avoid the possibility
14 recognized by this statute that judges or juries may favor their own employer or county to
15 the interests of "outsiders").

16 3.11 The defendant Sequoia has at the least the minimum contacts sufficient to
17 meet Constitutional standards of due process and fair dealing to justify jurisdiction in
18 Washington State.

19 3.12 As Sequoia is claiming as its trade secret property the vote casting and
20 counting software of the Sequoia AVC Edge machines, Sequoia has stepped into the shoes
21 of Snohomish County government with respect to the core governmental function of vote
22 counting in elections. Consequently, jurisdiction and service may be had on Sequoia in the
23 same manner as upon Snohomish County.

24 3.13 There is no reason to believe that an impartial trial in this matter cannot be had
25 in King County Superior Court, in the State of Washington.

26 3.14 As of any answer or appearance in this matter, service of process has been
27

1 properly had upon defendant Sequoia.

2 3.15 As of any answer or appearance in this matter, service of process has been
3 properly had upon defendant Snohomish County.

4 3.16 Personal jurisdiction exists over defendant Sequoia.

5 3.17 Personal jurisdiction exists over defendant Snohomish County.

6 3.18 Subject matter jurisdiction exists respecting the claims pled in this Complaint.

7 3.19 Venue is proper as to all defendants in King County, Washington.

8 3.20 There is no reason to believe that the ends of justice in this matter would not
9 be served by adjudication of this matter in King County Superior Court, in the state of
10 Washington.

11 IV. FACTS

12 4.1 Plaintiffs Wells and Lehto are legal, registered voters in Snohomish County,
13 Washington and citizens of Washington State and the United States of America.

14 4.2 Plaintiffs Wells and Lehto have voted in the past in Snohomish County and
15 wish and intend to vote in Snohomish County in future elections.

16 4.3 During the last two years, Plaintiff Lehto has voted both on Sequoia touch
17 screen voting machines operated and owned (subject to retention of ownership of the trade
18 secret software by Sequoia) by Snohomish County, as well as by absentee ballot.

19 4.4 During the last two years, Plaintiff Wells has voted both on Sequoia touch
20 screen voting machines owned by Snohomish County, as well as by absentee ballot.

21 4.5 Plaintiff Wells is a veteran of the Armed Forces of the United States, having
22 served during World War II in the Army Signal Corps in the Aleutian Islands in order to
23 defend the democratic institutions and open elections of the United States from foreign
24 aggression.

25 4.6 Plaintiff Wells is a descendent of one of the early state legislators of this state
26 named Robert Wells, as well as a descendant of a Revolutionary War soldier named Jack
27

1 Wells of Massachusetts. As a citizen and veteran, Plaintiff Wells possesses a strong
2 individual interest in the integrity and preservation of voting rights and our democratic
3 elections.

4 4.7 Plaintiff Lehto is a licensed attorney in good standing in the state of
5 Washington, practicing in the area of business law and consumer fraud, including some
6 litigation experience in the field of computer forensics.

7 4.8 Plaintiff Lehto was an election day attorney observer trained in voters' rights in
8 the November 2004 election, and observed both voting and whatever vote counting was
9 allowed to be observed at Penny Creek Elementary School in Snohomish County. Plaintiff
10 Lehto possesses and has demonstrated a unique interest in the integrity and preservation
11 of voting rights and our democratic elections as a citizen and from being co-author of the
12 report "Election Irregularities in Snohomish County, Washington, General Election 2004",
13 available at www.votersunite.org/info/SnohomishElectionFraudInvestigation.pdf, which is
14 incorporated herein by this reference. See Appendix 'B' [Election Irregularities Report].

15 4.10 Because the study suggested that malfunction and/or fraud was certain in fact
16 but not in amount or cause, Lehto wished to obtain voting computer files for expert review.

17 4.11 After specific and repeated written and verbal request, Plaintiff Lehto was
18 denied information and testing repeatedly by defendants Sequoia and Snohomish County
19 that was necessary and/or very desirable for completing the study referenced above, on
20 account of Sequoia's claims of "trade secrecy" in the software that registers and counts
21 ballots and the County's "contractual obligations".

22 4.12 The information denied and access refused includes, but is not limited to, all
23 information to be derived from (1) inspection of the source code of the software (2) testing
24 the software (3) testing the voting machine as a whole (4) review of copies of computer files
25 related to ballot creation, storage, counting and reporting, including but not limited to an
26 opportunity to view, inspect, examine, and have access to original computer versions of
27

1 audit log files, and other computerized data. The denied data and files and testing are the
2 most direct way to determine most conclusively whether or not fraud, error or irregularity
3 occurred in the general election of 2004, because they are direct evidence of whether or not
4 electronic "ballots" recorded properly inside touch screen voting computers.

5 4.13 Denial of the information requested and of access to the observational and
6 testing data and opportunities necessary for meaningful oversight of elections, vitiates and
7 nullifies the guarantees under the Washington Constitution and the fundamental right to
8 vote and to have that vote counted, whereby citizens of Washington are intended to be
9 guaranteed open, transparent, and verifiable elections consistent with the high ideals of
10 democracy.

11 4.14 The denial of the ability to view, inspect, examine and have access to the
12 above information and other observational and testing data and opportunities for meaning
13 oversight of elections has damaged Plaintiff Lehto personally and directly in that he has
14 been forced to obtain significantly more data of an indirect nature, such as subtotals for
15 ballot propositions from each voting machine, in an attempt to do additional statistical
16 analysis in significant part as a substitute for the denied information. In turn, this indirect
17 method requires recruitment of extra volunteers for data entry and extra study, instead of
18 interacting with the services of a volunteer expert on computer voting regarding the secret
19 software. On information and belief, Lehto has also been denied direct copies of even the
20 limited computer files that will be released, with the County providing files in .pdf form that
21 strips the file of any meta-data such as editing information and much other forensically
22 useful information, and the file provided does not appear to be a complete audit log.

23
24 4.15 Because of the denial and withholding of information pursuant to the contract's
25 trade secret and other provisions, Lehto has incurred damages in the form of additional
26 financial expense to purchase and/or scan paper-based voting records, additional parking
27 costs to visit the Auditor's office for this, has incurred many hours of inconvenience, and

1 has been frustrated and delayed in completing his research work. Moreover, both Sequoia
2 and Snohomish County, pursuant to the express contractual provision requiring their
3 mutual “cooperation” in defeating any requests information deemed by Sequoia to be
4 “proprietary” or “confidential”, have forced plaintiffs to commence this lawsuit to invalidate
5 the barriers to free inquiry in the Contract, where the County allows one private party to
6 freely review and publish election data or procedures (Sequoia) but not any other party.

7 4.16 On information and belief, ballots cast by Washington citizens for the
8 gubernatorial candidate, Christine Gregoire, were illegally, unconstitutionally, and
9 faithlessly attributed to the gubernatorial candidate, Dino Rossi, due to systematic errors of
10 the AVC EDGE Electronic Voting System DRE (Direct Recording Electronic) technology
11 sold by Sequoia to the County. See e.g. Lehto/Hoffman Study, Exh. B, page 19.

12 4.17 On information and belief, substantiated by both eyewitness voter reports and
13 statistical analyses, it appears that Sequoia machines may well record, modify and/or
14 miscount previously recorded ballots. Consequently, plaintiffs Wells and Lehto have good
15 reason to believe that their past and future votes are subject to unlawful dilution, unlawful
16 miscalculation and that the meaningful exercise of their right to vote has been subject to
17 interference. Plaintiffs have been denied the reliable verifiability provided by human
18 observers and required by law, the Washington Constitution, and democratic traditions and
19 practice.
20

21 4.18 Plaintiff Lehto has also been damaged while serving in the capacity of a
22 volunteer attorney voting rights observer on Election Day, November 2, 2004. While
23 stationed at Penny Creek Elementary School as a poll-watcher and present as of right after
24 the close of the polls, Lehto observed the counting of the numbers of absentee and
25 provisional ballots (which were later tabulated at the counting center), but was not able to
26 observe the counting or tabulation of electronic ballots, even though five out of six Sequoia
27 touch screens printed out election totals, the sixth failing entirely to do as required.

1 4.19 In fact, no one present or working on the Election Board at Penny Creek
2 Elementary School was certain where the electronic ballots were physically located
3 preceisely, at one point asking Mr. Lehto if he knew where the ballots were. In addition, as
4 to one of the six Sequoia machines stationed at that polling location, Lehto was not even
5 able to inspect and observe the grand totals printed out by that machine, apparently due to
6 a machine malfunction of some sort preventing the machine from printing a “results slip” as
7 required by state law, County procedures and equipment design.

8
9 4.20 Plaintiffs Wells and Lehto have sustained actual harm to their substantive due
10 process liberty interests as citizens of Snohomish County, Washington State, and the
11 United States by virtue of being unable to verify the accuracy, integrity, and legitimacy of the
12 election of their government, and by having their right to vote burdened and subjected to
13 interference by the Contract, and the threat of elimination of their vote in future elections.

14
15 4.21 The allegations set forth in this Complaint for Declaratory Judgment, under all
16 the circumstances, show that there is substantial controversy between parties having
17 adverse legal interests of sufficient immediacy and reality to warrant the issuance of a
18 declaratory judgment.

19
20 4.22 Elections are a matter of ultimate public interest. They implicate fundamental
21 principles of Constitutional magnitude pertaining to the essential rights of citizens in a
22 democratic society, and the question of whether or not power is being legitimately
23 transferred from the people to the government. As these rights pertain to the essential
24 integrity of representative government itself, the right to pursue these actions directly
25 resides in the people, is non-delegable, and must be vindicated in the judiciary.
26
27

1 4.23 The allegations set forth herein, the facts and evidence to be adduced in
2 proceedings before the court, and the unique and special nature of the right to vote,
3 establish that plaintiffs have effectively exhausted all lawful remedies within the existing
4 organs of government charged with oversight of elections.
5

6
7 **V. ADDITIONAL FACTS AND BACKGROUND**

8 5.1 For several years leading up to the year 2002, the people comprising the
9 electorate of Snohomish County voted on paper ballots that were then either optically
10 scanned or hand counted to obtain election subtotals and totals.
11

12 5.2 These paper ballots were used for both absentee/early voting, as well as for
13 election day voting, where ballots were filled out in small plastic privacy booths, with the
14 voter directly marking lines or ovals to register votes, using black pens and similar
15 instruments for that purpose.
16

17 5.3 On or about Spring 2002, Snohomish County entered into negotiations with
18 defendant Sequoia for the purchase of DRE (Direct Recording Electronic) voting machines
19 for Election Day voting purposes. While nominally named “Direct” recording electronic
20 systems, these systems create electronic ballots only by a very indirect route involving
21 numerous steps not subject to direct observation or verification.
22

23 5.4 On July 24, 2002, Snohomish County executed the purchase contract for 1000
24 DREs from Sequoia entitled: “Agreement Between Snohomish County, Washington and
25 Sequoia Voting Systems, Inc. for the Purchase of the AVC EDGE Electronic Voting System”
26 (hereinafter the “Contract”). A true and accurate copy of the Contract is attached hereto as
27

1 Exhibit A.

2 5.5 The Contract calls for Snohomish County to pay \$5,054,649 for the Sequoia
3 touch screen DRE machines and related accessories and spare parts, plus a \$40,000
4 annual software licensing fee commencing one year from date of delivery.

5 5.6 In the above Contract dated July 24, 2002, Exhibit A hereto, defendants
6 Sequoia and Snohomish County stipulated that elections are a governmental function that
7 Snohomish County is authorized to provide; under the Contract, Sequoia provides touch
8 screen computers and vote counting services to Snohomish County via software it licenses.
9

10 5.7 With respect to both the equipment and software, Sequoia disclaims and denies
11 all warranties of quality, whether express or implied, including the implied warranties of
12 merchantability and fitness for a particular purpose.
13

14 5.8 The Contract provides a one year limited warranty, under ¶ 32 thereof, that the
15 equipment delivered will be free from defects in material and workmanship and will
16 conform to the specifications included in the contract documents and manuals.

17 5.9 With regard to the software itself, the Contract only provides a very limited
18 software warranty, under Exhibit B thereto, that the latest unmodified version of the
19 Software delivered thereunder shall perform in accordance with the Software
20 Documentation for a period of one year after the acceptance of the Software and Software
21 modification.
22

23 5.10 To limit what can be done in the event of software malfunction, the Contract
24 also provides, under Exhibit B, that the exclusive remedy shall be for the County to have
25 replaced any defective media which prevents the Software from satisfying the limited
26 warranty or to correct any errors which the County finds in the Software during the warranty
27 period which prevent the Software from performing as described in the Software

1 documentation. Any replacement Software will be warranted for the remainder of the
2 original warranty period or through completion of the next election, whichever is longer.

3 5.11 The software documentation needed to interpret the meaning of this warranty is
4 claimed as a trade secret by Sequoia and Snohomish.

5 5.12 The Contract establishes a scheme under paragraphs 26 and 32 and others,
6 where Snohomish County and Sequoia agree to conceal or delay disclosure of information
7 from the people, ostensibly to prevent disclosure of information deemed by Sequoia to be
8 “confidential” or “proprietary” or “trade secret.”
9

10 5.13 Specifically, the County agrees in Paragraph 26 [Confidentiality] that following
11 “demand ... upon the COUNTY pursuant to Ch. 42.17 (Public Records Act) or otherwise for
12 disclosure of materials considered by the CONTRACTOR to be “Confidential”, “Proprietary”
13 or a “Trade Secret”, the COUNTY ... shall ... refrain from disclosing such records for a
14 period of 72 hours in order to provide the CONTRACTOR with an opportunity to seek legal
15 protection against disclosure from a court of competent jurisdiction.”
16

17 5.14 Paragraph 34 [Subpoena] provides that “[i]n the event that a subpoena or other
18 legal process issued by a third party in any way concerning the Equipment or Related
19 Services provided pursuant to this Agreement is served upon CONTRACTOR or
20 COUNTY... [the parties] agree to cooperate with the other party in any lawful effort by the
21 such other party to contest the legal validity of such subpoena or other legal process
22 commenced by a third party.” (emphasis added)
23

24 5.15 On information and belief, none of the employees or agents or programmers of
25 Sequoia who have *de facto* control over operation of vote counting mechanisms are in any
26
27

1 way sworn to any oath of loyalty, honesty, or accuracy as are election officers, even though
2 they have substantial opportunity to affect the election.

3 5.16 The implementation of the Contract with Sequoia and Snohomish County's own
4 procedures has numerous direct consequences adverse to voters and to the fairness, ease,
5 efficiency, accuracy, transparency, and verifiability of elections and accountability of elected
6 officials and election officials.
7

8 5.17 The character and magnitude of injury to plaintiffs and to the meaningful
9 exercise of their right to vote and the franchise of the citizenry are such that customary
10 deference to state regulation and regulators is inadequate and inappropriate to protect the
11 people's basic rights, or to police the integrity of the elections that transfer power from the
12 people to the government.
13

14 5.18 Those voters at polling places who do not wish to use a touch screen voting
15 computer lacking in the verifiability available with a paper ballot lose any other voting option
16 at polling places other than a legally inferior provisional ballot.
17

18 5.19 Voters wishing to vote at their polling place on Election Day are subjected to
19 lines during rush periods of 45 minutes or longer because the process by which voting takes
20 place on touch screen machines itself forces the touch screens to act as bottlenecks, unlike
21 paper ballots which can be voted on one's knee, lap or against a wall if the voter does not
22 wish to wait for a privacy booth.
23

24 5.20 Defendant's Sequoia's AVC Edge System machines readily allow voters to vote
25 multiple times, in violation of the Constitutional principle requiring one person/one vote, by
26 simply pressing a button on the Sequoia twice. Poll workers are advised in writing to watch
27

1 voters under these circumstances to insure they do not vote more than once.

2 5.21 Using the same button, the instructions for the blind voter verbally request the
3 voter to press the “yellow button” in order to activate the options for blind voters, but
4 otherwise fails to give the blind voter enough detail about what the color yellow looks like,
5 even though touch screens are marketed as “access” devices for the disabled.
6

7 5.22 The procedure for recalibrations of the touch screen also involves pressing the
8 yellow button, as do other procedures. The design of the system’s procedures concerning
9 the yellow button are sufficiently overlapping and confused that incidences of multiple voting
10 would be readily rationalized, as are the more than 80 Snohomish County polling places
11 whose number of signatures in the poll books does not match the number of votes on
12 Sequoia DREs, according at least to the face of the ballot accountability sheets.
13

14 5.23 Defendant Sequoia’s voting system as implemented by Defendant Snohomish
15 County fails to provide "absolute secrecy" in preparing and depositing ballots, in violation of
16 the Article VI, §6, because the flat screen position broadcasts the choices of the voter to
17 anyone within many feet of the voting area, including but not limited to those walking by.
18 The form of “electronic ballot” not only fails to meet Constitutional standards, but as
19 designed, either allows time stamped e-ballots to potentially be correlated to real voters,
20 and if not, then this voting scheme renders the very proof elections officials wish to have
21 before allowing investigation (proof of ballots not counted as cast) impossible to show.
22

23 5.24 Virtually all touch screen voting computers are transported on Election Day
24 morning and are subject to risks of vibration and accident as well as other causes that result
25 in the miscalibration of a number of the touch screen computers, causing those computers
26
27

1 to register a selection of the wrong candidate (disproportionately in favor of one party) and
2 leaving voters believing the “cast vote” function will not operate any more accurately.

3 5.25 Miscalibration does not result in a random error, but results in a machine that
4 systematically registers a vote contrary to the voter’s intent by, for example, consistently
5 casting a vote on a line of the electronic ballot some distance below the line selected by the
6 voter the screen. Unlike random miscalibration errors would be expected to function, the
7 actual errors on Election Day did not affect all races or all parts of the screen.
8

9 5.26 On information and belief, at least 81 different touch screens had to be
10 recalibrated on election day, some more than once, meaning that nearly 10% of the touch
11 screens exhibited vote hopping or switching behavior sufficient to require intervention by
12 elections officers and/or troubleshooting teams.
13

14 5.27 There exists substantial evidence, direct and circumstantial, statistical and
15 eyewitness, indicating that Sequoia’s AVC Edge System is inherently less accurate and
16 verifiable than other available and even more affordable election systems.
17

18 5.28 Snohomish County lacks the resources to provide adequate computer security
19 checks, to determine prior to voting whether the devices are communicating wirelessly or
20 over an electrical or data network, to train poll workers to check the integrity of the computer
21 security every two hours as required by statute and to enforce said statutory requirement.
22 As a consequence, Snohomish County is dependent upon a continuing service contract
23 with Sequoia in order to keep machines running on even a basic level and could not hold
24 elections for very long without continuous dependence on this outside assistance.
25

26 5.29 Plaintiff Lehto has requested and been denied access to Sequoia voting
27

1 machines for auditing and testing purposes in order to make further determinations about
2 the reliability and accuracy of the software and hardware used. All requests by Lehto for
3 things such as operator's manuals, testing opportunities, copies of software programs,
4 copies of source code, object code, original audit log computer files, and other data deemed
5 necessary for a computer forensics analysis has been denied on account of the Sequoia
6 contract and its trade secrecy provisions.
7

8 5.30 A genuine controversy exists between plaintiff Lehto and defendants
9 Snohomish County and Sequoia concerning the Contract as written and applied to plaintiffs.
10 This controversy specifically, without limitation to the examples set forth herein, implicates
11 the enforceability of the contractual scheme of elections implicitly and explicitly established
12 by the Contract's constitutionality, legality, and propriety under law and public policy.
13
14
15
16

17 **VI. CAUSES OF ACTION – Basic Principles**

18 6.2 The specific causes of action hereinafter set forth in the following section with
19 greater particularly rest upon the factual allegations set forth in Sections I - V above and the
20 common body of fundamental principles hereinafter set forth in this section.
21

22 6.3 The first principle in democracy and the first principle of Article I, §1 of the
23 Washington State Constitution is that all political power is inherent in the people.

24 6.4 Consistent with interpretation of the Washington State Constitution express
25 command, plaintiffs recur to basic principles in this action seeking the clarification and
26 vindication of fundamental rights, because such frequent recurrence to basic principles is
27

1 necessary to the preservation of liberty and the perpetuity of free government. Washington
2 Constitution, Art. I, §32.

3 6.5 The right to vote is deemed a fundamental right, because, as held, it is
4 “preservative of all other rights.” It has been held, in order to be meaningful, to include
5 within its scope the right to have one’s vote counted, and any other things necessary to give
6 the vote effect. The right to vote is so fundamental that it was used to create and ratify
7 the Constitution itself, thus voting clearly existed prior to the Constitution itself.
8

9 6.6 Article I, § 6 of the Washington State Constitution mandates that elections in the
10 state of Washington are required to be “free and equal.” Article I, §19 of the Washington
11 State Constitution provides: “All elections shall be free and equal, and no power, civil or
12 military, shall at any time interfere to prevent the free exercise of the right of suffrage.” It
13 follows directly from the above that no power, civil or military, shall at any time interfere with
14 the free and proper counting of the vote, in the absence of which the right of suffrage is
15 rendered illusory.
16

17 6.7 RCW 42.30.010 [Open Meetings Act] provides one of the strongest public
18 policies of the state of Washington, or any state:
19

20 The legislature finds and declares that all public commissions, boards,
21 councils, committees, subcommittee, departments, divisions, offices and all
22 other public agencies of this state and subdivisions thereof exist to aid in the
23 conduct of the people’s business. It is the intent of this chapter that their actions
be taken openly and that their deliberations be conducted openly.

24 The people of this state do not yield their sovereignty to the agencies
25 which serve them. The people, in delegating authority, do not give their public
26 servants the right to decide what is good for the people to know and what is not
27 good for them to know. The people insist on remaining informed so that they
may retain control over the instruments they have created.

1 6.8 The purpose of the Act is to allow the public to view the decision-making process
2 at all stages, for the purposes quoted above in the statement of public policy regarding the
3 Open Meetings Act. The purposes of both the Act and constitutional government would be
4 undermined by narrow construction of one of the strongest statements of policy under the
5 law. It follows that the unique process of elections by which government is linked to the
6 consent of the governed may not be insulated from direct knowledge by the people.
7

8 6.9 RCW 42.17.010 *et seq.* [Public Disclosure Act] is intended to assure continuing
9 public confidence in the fairness of elections and governmental processes through allowing
10 liberal request and disclosure of documents by the government. The purpose of the
11 Public Disclosure Act (PDA) is to keep public officials and institutions accountable to the
12 people and to preserve the most central tenets of representative government, namely, the
13 sovereignty of the people and the accountability to the people of public officials and the
14 governmental agencies that serve them. The Public Disclosure Act is also to be liberally
15 construed to promote full access to public records, and its exemptions are to be narrowly
16 construed.
17

18 6.10 The Open Meetings Act, Public Disclosure Act and other laws implement
19 principles of constitutional government which inhere in the Washington State Constitution
20 and are instantiated in the forms of government instituted among the people through their
21 elected officials.
22

23 6.11 Pursuant to the Washington Constitution, various public referenda, statutes and
24 provisions of the Washington Administrative Code, Washington state elections are also
25 required to be open to the public generally for purposes of observation, and open to
26
27

1 registered electors in particular, for purposes of casting votes.

2 6.12 While electoral law and regulation necessarily have some impact on the right
3 to vote, the important regulatory task of ensuring that elections are fair and orderly must be
4 subject to strict scrutiny where the public's right to know and the integrity of the electoral
5 process itself is implicated.
6

7 6.13 No private right of contract can supplant the right of the public to examine the
8 precise nexus between the meaningful exercise of its franchise and the legitimacy by which
9 elected officials are authorized to exercise the powers of government on its behalf.
10 Plaintiffs have sought the appropriate and least disruptive means by which the fundamental
11 rights of the people can be vindicated, the character and nature of which, outweigh any
12 possible interest the defendants have in maintaining secrecy, which applies properly only to
13 the interest of voters (in not being retaliated against for their voting choices) and not to any
14 interest of government in the voting process.
15
16

17 6.14 It is the policy of the State of Washington "to encourage every eligible person
18 to register to vote and to participate fully in all elections." RCW 29A.04.205. "No right is
19 more precious in a free country than that of having a voice in the election of those who
20 make the laws under which, as good citizens, we must live. Other rights, even the most
21 basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17,
22 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964)."
23

24 6.15 Free, equal and open elections constitute one of the fundamental rights state
25 national guard and national defense forces are created in order to protect. If the military
26 forces of a foreign power sought "merely" to register and count America's votes in secret,
27

1 this would be recognized immediately for what it is, and resisted militarily. The law will not
2 abide a conquest by contract, or a takeover of democracy by alternative means.

3 **VII. CAUSES OF ACTION – Enumeration of Claims**

4 7.0 Plaintiffs herein seek a series of Declarations pursuant to RCW 7.24 *et seq.*, which
5 Declarations will resolve fully the case and controversy herein respecting interpretation of the
6 Contract and plaintiffs' rights respecting the subject matter of the Contract in light of the
7 Washington State Constitution, statutes, case authority, and public policy, and such other and
8 further relief as may be necessary and proper under RCW 7.24.080 including compensatory,
9 restitutionary, and coercive remedies. All facts set forth herein or appended hereto are hereby
10 incorporated herein by this reference and shall apply to each of the causes of action which follow:
11

12 7.1 First Cause of Action: Impermissible Infringement on Liberty Interests in "Free and
13 Equal" Arising under the Washington State Constitution, Law and Tradition.
14

15 7.1.1 Article I, § 6 of the Washington State Constitution mandates that
16 elections in the state of Washington are required to be "free and equal." Article I, §19 of
17 the Washington State Constitution provides: "All elections shall be free and equal, and no
18 power, civil or military, shall at any time interfere to prevent the free exercise of the right of
19 suffrage." The foregoing, together with democratic traditions both antecedent to and
20 resultant from such Constitutional provisions, mandate that no power, civil or military, shall
21 at any time interfere with the free and proper counting of the vote, in the absence of which
22 the right of suffrage is rendered illusory. A legally cognizable and protected liberty interest
23 arises under the Washington State Constitution and Washington law and tradition.
24

25 7.1.2 The Contract herein seeks, through the civil authority imputed to it by the
26
27

1 Common Law, to interfere with the free exercise of the right of suffrage and creates, by virtue of
2 the technologies involved, an inherently separate and unequal method of counting the vote in
3 violation of the Washington State Constitution and Washington law and tradition. The Contract
4 and the voting system put into effect thereby creates a Constitutionally defective election scheme,
5 in that it shields errors, known and unknown, and potential errors from effective review, oversight,
6 verification, and correction, and, *inter alia*, puts voters in possession of a machine that will readily
7 allow them to vote multiple times and faithfully records, counts, tabulates and reports the
8 intentions of the voters.
9

10
11 7.1.3 The right of suffrage includes a public counting of the vote, in the
12 absence of which the public's fundamental right by which its government is held accountable can
13 be subject to secret usurpation by corrupt practices, incompetence or neglect as, on information
14 and belief, occurred here.

15
16 7.1.4 In interpreting the Washington state constitution, Article I, §32 provides
17 that "a frequent recurrence to fundamental principles is essential to the security of individual right
18 and the perpetuity of free government".

19
20 7.1.5 The Court should declare the Contract void in whole or in part to the extent it
21 violates the above-described liberty interests in free and equal elections, burdens and dilutes the
22 fair, equal and effective right to vote, and gives rise to an electoral scheme which is not rationally
23 related to the purposes of establishing a representative government as set forth in the Constitution
24 and under Washington law and tradition.

25
26 7.2 Second Cause of Action: Violation of Policies Mandating Transparency of Elections
27 Underlying Public Disclosure Act, RCW 42.17 et seq. and Open Meetings Act, RCW 42.30 et seq.

1 and Washington Law.

2 7.2.1 The contract terms have the direct effect of negating the overarching
3 legislative, public and Constitutional purposes embodied in the Public Disclosure Act, RCW 42.17
4 *et seq.* and Open Meetings Act, RCW 42.30 *et seq.* and the statutory framework respecting the
5 conduct of elections. The Court should declare the Contract void in whole or in part to the extent
6 that it removes from public view and review a core operation of government negating the
7 legislative, public and Constitutional purposes embodied in the Public Disclosure Act, RCW 42.17
8 *et seq.* and the Open Meetings Act, RCW 42.30 *et seq.* and the legal framework governing the
9 conduct of elections in Washington State.
10

11
12 7.2.2 The purpose of the Public Disclosure Act is "so as to assure
13 continuing public confidence of fairness of elections and governmental processes" and "full
14 access to information concerning the conduct of government on every level must be assured as a
15 fundamental and necessary precondition to the sound governance of a free society." RCW
16 42.17.010.
17

18 7.2.3 The Contract provision of touch screen voting computers violates
19 the requirements of RCW 29A.44.250 which requires that "the tabulation of ballots, paper or
20 otherwise, shall be open to the public" because the computerized counting of the vote is invisible,
21 absolutely unverifiable, and, hence, uncorrectable. It violates WAC 434-261-010 which requires
22 that all aspects of the activities of a vote counting center be open to the public.
23

24 7.2.4 The Court should declare the Contract void in whole or in part to the extent it
25 violates the transparency of elections mandated by the Constitution, Washington law and statute,
26 and Washington tradition.
27

1 7.3 Third Cause of Action: Impermissible Delegation of Core Governmental Function.

2 7.3.1 The conduct of elections and the counting of ballots is a core function of
3 government that may not be delegated or “outsourced” to a private entity not subject to the duties
4 owed by a government to its people. Sequoia has “stepped into the shoes” of the government and
5 has, in fact, become the government with respect to Election Day vote counting, but wrongly
6 refuses to acknowledge the governmental obligations and the rights of the citizens that come
7 along with that status.
8

9 7.3.2 The Contract herein purports to delegate authority to a private corporation
10 respecting the conduct of elections and purports to require the government to follow a legal
11 strategy antithetical to open and transparent elections by opposing the public’s right to know how
12 votes are cast, counted, tabulated in furtherance of private rather than public purposes.
13

14 7.3.3 The Contract impermissibly purports to delegate the authority of an “election
15 board” under RCW 29A.04.049 (consisting of the election officers serving at each polling place
16 location) to a private party. Sequoia, with its ongoing maintenance and support of its own
17 machines, is the functional equivalent of the elections division of the Auditor’s office.
18

19 7.3.4 On information and belief, none of the employees or agents of
20 Sequoia who have *de facto* control over operation of vote counting mechanisms are in any way
21 sworn to any oath of loyalty, honesty, or accuracy as are election officers, functionally depriving
22 Washington elections of the integrity mandated by law. It violates the state policy of elections set
23 forth at RCW 29A.04.205 “to protect the integrity of the electoral process by providing
24 equal access to the process while guarding against discrimination and fraud.”
25 in that Sequoia is granted unequal and greater access to the process than
26
27

1 any citizen without adequate precautions or compliance with testing and certification requirements
2 under RCW 29A.12.101. Sequoia's devices fail to meet other requirements of other certified voting
3 technologies.

4 7.3.5 Sequoia is not constitutionally or legally qualified to be an elections officer,
5 since it is neither a natural person, a United States citizen, or otherwise qualified to administer
6 elections. Sequoia was not authorized to do business in the State of Washington on July 24,
7 2002, the date the Contract was entered into.

8 7.3.6 The Court should declare the Contract void in whole or in part to the extent
9 that it establishes an impermissible delegation of core governmental functions to a private party
10 while purporting to relieve from that private party from the performance of the Constitutional, legal,
11 and traditional obligations associated therewith.

12 7.4 Fourth Cause of Action: Impermissible Claims of Trade Secrecy Waived as a Matter
13 of Law and Fact.

14 7.4.1 There is no legitimate "trade secrets" in Sequoia software that are not already
15 adequately protected by the difficulty in decompiling the source code in any software. To the
16 extent the existence of trade secrets is used as a basis to deny public access to records pertaining
17 to the conduct of its election, such denial is baseless and contrary to law and policy.

18 7.4.2 Trade Secrecy has been waived by disclosure, in that Sequoia code has
19 actually been released to the public and is in the public domain. Trade secrecy as to operator's
20 manuals has been waived by actual past disclosure in New Mexico and other states. Sequoia has
21 failed to sufficiently protect its alleged trade secret software in its own operations, marketing,
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1 testing, and escrow of software, and only adequately or aggressively seeks secrecy as applied to
2 public requests for information on the same, thus waiving trade secret status.

3 7.4.3 Sequoia's software fails to qualify as a trade secret because it fails to
4 meet the required standard of providing a competitive advantage to Sequoia in that it is clearly
5 inferior and riddled with programming errors and no person would use it as a model for entry into
6 the voting equipment field, thus it fails to constitute the requisite "competitive advantage" needed
7 for trade secret status.
8

9 7.4.4 By virtue of its use in a core governmental function, the software has
10 entered the public domain and is no longer a trade secret, if it ever was. Sequoia is functioning in
11 the capacity of a governmental entity and is constrained by the statutory and Constitutional
12 requirements applicable to Snohomish County in assuring a free, equal, open, and verifiable
13 election conforming in all respects to the statutory framework created.
14

15 7.4.5 Specific provisions within the Contract whereby the parties agree to cooperate in
16 order to preserve trade secrecy and confidentiality of the vote casting and vote counting software,
17 and to work together to quash "through any lawful means" any attempt by the public or any third
18 party to find out information about this software or any other matter the defendant Sequoia
19 considers "confidential" is void as a matter of law under the Washington State Constitution, statute
20 case authority, tradition, and public policy. The Court should declare the Contract void in whole or
21 in part to the extent it sets forth trade secrecy and confidentiality in violation to the principles set
22 forth under the Washington Constitution, Washington law and statute, and Washington tradition.
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27.5 Fifth Cause of Action: Contract Void for Misrepresentation and Breach of Warranty.

1 7.5.1 Sequoia made express representations that the Sequoia AVC Edge was fit for
2 use in elections to be conducted by Snohomish County, that it was accurate, did not change votes
3 or malfunction, and that it complied with all state and federal laws. On information and belief,
4 Sequoia made other express representations about the existing and future performance of the
5 AVC Edge machine.
6

7 7.5.2 Sequoia then attempted to and succeeded in inserting a contractual provision
8 purporting to waive the implied warranties of merchantability and fitness for a particular purpose
9 through a contract provision. This purported waiver means that Sequoia was denying that the
10 machines were fit for their normal use (merchantability) and denying that the Sequoia machines
11 were fit for Snohomish County elections (the particular purpose for Snohomish County).
12

13 7.5.3 Despite the attempted disclaimer of any basic utility of the machines beyond a
14 limited one year parts warranty and one year warranty that the machines would merely meet the
15 contract description of them, Sequoia insisted on a price of approximately \$5,054,000 for 1000
16 machines, or approximately \$5,054 per machine, while other jurisdictions (e.g. county in
17 California) were only charged approximately \$18 million for approximately 5000 machines, or only
18 about \$3600 per machine.
19

20 7.5.4 These disclaimers of warranty were insufficient as a matter of law, the express
21 warranties survive the form disclaimers, and disclaimer of the implied warranty of fitness for a
22 particular purpose was ineffective.
23

24 7.5.5 The Court should declare that Sequoia breached its express and implied
25 warranties justifying rescission, restitution, and damages.
26
27

1 7.6 Sixth Cause of Action: Contract is Deficient for its Failure to Provide Required “Chain
2 of Custody.”

3 7.61 Ballots are required to be under seal whenever not being observed by the
4 public and/or the political parties and therefore inert and immune from tampering. Ballots are not a
5 all inert or reasonably immune from change or tampering while on the hard drives or memory
6 cartridges of Sequoia machines.

7 7.62 No memory device, be it the hard drive or flash memory, is secured in the
8 chain of custody other than the memory cartridge, submitted to the counting center by the workers
9 of each polling places’ election board, after the polls close. Because the memory cartridge is
10 changeable and not reasonably free from tampering during election day like paper ballots in a
11 locked box are, the use of Sequoia memory cards to report results violates the spirit and the letter
12 of the security and chain of custody provisions of RCW 29A. *et seq.*

13 7.6.3 It provides a voting system or device that violates the statutory
14 chain of custody of ballots, in which ballots are not supposed to be alterable or changeable while
15 under seal or while under any other condition besides the voter exercising her vote, because all
16 electronic ballots are subject to silent, undetectable, unverifiable changes on the computer
17 hard drive even after being recorded by the voter. The Court should declare the scheme
18 established by the Contract to be violative of the requirements of Washington Constitution, law and
19 statute, and tradition.

20 7.7 Seventh Cause of Action: Failure to Provide a Proper, Separate, Secret Ballot.

21 7.71 Plaintiffs allege that the contract to purchase Sequoia AVC Edge voting
22 machines is illegal, and void *ab initio* (from the day it was signed) because it purports to waive the
23 the

1 right to vote a legal ballot of Snohomish County electors, because the design of the touch screen
2 machines inherently creates both secret vote casting (in which the voter does not truly know how
3 his or her vote was cast) as well as secret vote counting (in which no Snohomish County resident
4 is able to observe the processing and counting of touch screen votes) while denying the only
5 secrecy allowed by law (the secrecy of the ballot), because the choices of the voter are openly
6 visible to any within eyesight distance of the voter.
7

8 7.72 Sequoia's touch screens do not use "ballots" in the Constitutional meaning of
9 the term "ballot", as illustrated in the Constitution itself, at Article VI, § 18. It does not allow
10 witnesses to "observe the ballots and the process of tabulating votes" during a hand recount in
11 violation of RCW 29A.64.041(1) where the "ballot" is statutorily defined as "the physical document
12 on which the voter's choices are to be recorded" RCW 29A.64.041 (1); RCW
13 29A.04.008(1)(d). The touch screens do not satisfy the statutory scheme for Washington
14 elections.
15

16 7.73 Touch screen voting systems do not provide "absolute secrecy" in preparing
17 and depositing ballots, in violation of the Article VI, § 6, because electronic ballots can be traced
18 as to the time they were cast and thus correlated with particular voters.
19

20 7.74 The touch screen voting machines are not statutorily authorized
21 because they do not qualify as "poll site ballot counting devices" which are required under RCW
22 29A.04.115 to be a device "programmed to accept voted ballots at a polling place for the purpose
23 of tallying and storing the ballots on election day", in that the touch screens do not "accept voted
24 ballots" but rather create their own alleged electronic ballots, nor have
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1 these touch screens been approved for use fully within the meaning of RCW
2 29A.12.010.

3 7.75 Touch Screens violate the recording requirements of RCW 29A.12.150
4 (1) and may not be used in any election because ballots are not recorded on a "separate" ballot
5 available for audit purposes after the election because the ballots are not "separate" but rather
6 joined, and are not readily available for audit purposes.

7
8 7.76 For reasons similar to those stated directly above, the Secretary of
9 State improvidently certified the Sequoia machines in violation of RCW 29A.12.150(2) which
10 requires the Secretary of state not to certify unless separate ballots available for audit purposes
11 after the election are created.

12
13 7.77 Further, Plaintiffs for their causes of action plead below also allege that the
14 defects stated below related to the contract for the sale of the Sequoia Edge voting machines go to
15 the whole of the contract and the court should declare that such defects render the Contract void
16 and unenforceable as an illegal contract, and any defects are not severable from the rest of the
17 contract.

18
19 7.8 Eighth Cause of Action: Conflict of Interest. The Court should declare that the
20 Contract is void as the product of impermissible conflict of interest on the part of Snohomish
21 County agents, employees, and officials involved in the Contract negotiations and decisions to
22 purchase and justify the decision to purchase the Sequoia equipment.

23
24 7.8.1 There is an unavoidable conflict of interest between the privacy desires of
25 Sequoia and the public nature of elections which are embodied in the Contract. Snohomish
26
27

1 County and Sequoia failed to bargain at arms length, in that they failed to expressly agree that
2 Sequoia would comply with all federal and state laws.

3 7.8.2 Snohomish County, by and through its agents, including but not limited to Sco
4 Konopasek, expressed favoritism toward Sequoia in the contracting and bidding process. After
5 Konopasek left Snohomish for a similar position in California, he agreed to purchase (over
6 objections of other county officials) additional Sequoia machines even though they were not the
7 lowest responsible bidder and their software was rated as inferior, or the like. This favoritism for
8 Sequoia and also for electronic voting has led Konopasek to publish articles purporting to defend
9 the Sequoia technology against any criticism, when his duty and the duty of the County Auditor and
10 canvassing board are to provide impartial service to the public, not advocacy for private interests.
11

12 7.8.3 Similarly, on information and belief, Snohomish County Auditor Terwilliger has
13 also lobbied in favor of the machines, seeking in published op-ed pieces and otherwise to dismiss
14 criticisms of Sequoia machines, failing to investigate reports of significant anomalies and problems
15 with the machines, issuing testimonials on behalf of Sequoia on the www.sequoiavote.com website
16 such as: "We are pleased to report that our first countywide election using touch screen voting
17 technology has been an unqualified success."
18

19 7.8.4 Snohomish County continues to consent to continued publication of the above
20 statements, despite actual knowledge that they are untrue and/or would deceive a reasonable third
21 person as to the nature of Snohomish County's actual experience with the Sequoia machines which
22 has been highly problematic in the 2004 elections.
23

24 7.8.5 The court should declare that the actions of Snohomish County officials in the
25 Auditor's office establish an impermissible conflict of interest such that Snohomish County has
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27

1 abandoned its representation of its citizens and advanced the interests of a private party, Sequoia
2 Voting Systems, Inc., all to the damage of the people of Snohomish County.

3 7.9 Ninth Cause of Action: Violation of Magnuson-Moss Warranty Act.

4 7.9.1 As recited in the Contract for sale of the machines, the Sequoia Edge
5 machines were intended for municipal elections, and not for resale. Snohomish County contracted
6 to purchase the machines on as an agent of the people of Snohomish County, Washington.
7 Snohomish County does not charge for use of the machines or have a commercial purpose for
8 using them.
9

10 7.9.2 The Sequoia Edge voting machines are used by consumers to cast their votes
11 which is the sole intended use of the machines.
12

13 7.9.3 The Magnuson-Moss Act prohibits tying provisions that purport to waive
14 warranty or service contract provisions based on the failure to meet specified preconditions.
15

16 7.9.4 Sequoia claims that a subsequent service contract that Snohomish County
17 entered into subsequent to the purchase contract, would be void if any instruments, testing, or
18 examination is performed on the machines without Sequoia's permission, threatening it would
19 "void" the "warranty." This constitutes a "tying" provision violative of the Magnuson-Moss Warranty
20 Act with less than \$50,000 at issue under this claim. This tying provision was used, in whole or in
21 part, to deny plaintiff Lehto the right to conduct any testing of the Sequoia machines whatsoever,
22 without Sequoia's express permission, which has not been forthcoming and operates to conceal
23 the operations of the election machines denying the public access to a transparent, free, equal,
24 and open election, subject to view, review, oversight, and verification by the public.
25
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1 7.9.5 Plaintiffs are entitled to all remedies under the Magnuson-Moss Warranty Act
2 including attorneys' fees, costs, and all legal, equitable and restitutionary remedies.

3 7.10 Tenth Cause of Action: Contract Invalid and Illegal as Applied. The court should
4 declare that the Contract is invalid and illegal in that its implementation is contrary to the statutory
5 scheme for elections:
6

7 7.10.1 Election officials administering touch screen voting are unable to
8 "periodically examine the voting devices to determine if they have been tampered with" in
9 violation of RCW 29A.44.190 and are unable to have any meaningful access to the machines as
10 presently designed;
11

12 7.10.2 Sequoia touch screens do not comply with the requirements of Help
13 America Vote Act of 2002 (HAVA), 42 U.S.C. §15301 *et seq.*, and the technical standards
14 incorporated therein, in that Sequoia touch screens lack the ballot accuracy required; they can
15 only be used in elections under the questionable waiver of the Washington state Secretary of
16 State of compliance with these requirements.
17

18 7.10.3 The testing and certification requirements of RCW 29A.12.101 properly
19 applied would assure that multiple voting be disallowed, that voters not be issued ballots of other
20 jurisdictions besides their polling place that votes not be changeable or erasable after being
21 initially recorded, that voting systems be resistant to fraud and require that voting systems meet
22 all other requirements of any other certified voting technologies. The Sequoia machine fails to
23 meet statutory standards when properly applied.
24

25 7.11 Eleventh Cause of Action: Such Other Relief as Necessary and Proper under RCW
26 7.24.080. Further relief based on a declaratory judgment or decree may be granted whenever
27

1 necessary or proper under RCW 7.24.080 by petition to a court having jurisdiction to grant the
2 relief. When the application is deemed sufficient, the court shall, on reasonable notice, require
3 any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to
4 show cause why further relief should not be granted forthwith. Upon a determination upon the
5 declarations set forth above, Plaintiffs may seek other equitable, compensatory, or restitutionary
6 relief. For instance, without limitation of the foregoing, Plaintiffs believe that continued use of the
7 Sequoia AVC Edge voting machines would result in irreparable harm unless such use is
8 permanently enjoined.

9
10 7.12 Twelfth Cause of Action: Disgorgement and Restitution. Plaintiffs herein ask that the
11 Contract be rescinded, be deemed void *ab initio*, and that defendant Sequoia be required to
12 disgorge the full extent of any remuneration received under this illegal contract, less such
13 equitable adjustments as the court shall deem just, in an amount to be determined by the trier of
14 fact in this matter. Plaintiffs ask that the Contract be declared void, restitution ordered against
15 Sequoia in the amount of \$5,054,649, payable to Snohomish County upon return of the Sequoia
16 AVC Edge machines in their present condition.

17 18 19 **VIII. REQUESTS FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request the following relief:

21 8.1 Declaration of the invalidity of the Contract *ab initio* and *in toto*;

22 8.2 Declaration of the invalidity of the various provisions of the Contract as set forth
23 above in VII. CAUSES OF ACTION – Enumerated Claims;
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8.3 Upon grant of the Declarations above-requested, grant of plaintiffs' petition for such other and further relief as "necessary or proper" under RCW 7.24.080 and issuance of an order that defendants show cause why further relief should not be granted forthwith;

8.4 Grant of such other compensatory, declaratory, restitutionary, coercive, punitive, legal and equitable remedies as may be just and equitable, including judgment against defendants for damages sustained by plaintiffs in an amount to be proven at trial, together with prejudgment interest, costs and attorney's fees; restitution and disgorgement of sums unjustly enriching Sequoia; and injunctive relief respecting conduct resulting in harm irreparable at law and as reasonably necessarily to give affirmative effect to the Declarations made herein;

8.5 For such further relief as the court deems just and equitable.

DATED this 25th day of March, 2005.

GORDON EDMUNDS ELDER PLLC

By: _____
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Attorneys for Plaintiffs