



POLICY BRIEF

Should King County Have an Elected Director of Elections? An Overview of Initiative 25

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Introduction

Election integrity is essential to public confidence in our democratic system. Recent controversies over the conduct of elections in King County, particularly in 2004, has fostered a movement to change the way the top manager of elections is chosen in our state's largest county.

This November voters in King County will vote on Initiative 25, an ordinance that proposes an amendment to the County Charter which would make the Director of Elections an elected office.¹ Currently, the position is filled by appointment by the King County Executive. Initiative 25 sponsors gathered 74,000 signatures, giving them a comfortable margin over the 54,000 needed to qualify for the ballot.²

The Process

Making the Director of Elections an elected office requires a change to the County's governing Charter. Amending the Charter is a two-step process. Step one asks voters at a general election whether they want to vote on a Charter amendment. If that passes, step two is to vote on the amendment itself at a later general election.

The needed ordinance can be approved in one of two ways. Either the County Council can pass it by a majority vote, or the voters can pass it using the initiative process.

¹ The official title of the office is Director of the Records, Elections and Licensing Division (REALS), within the Department of Executive Services. For simplicity, this paper uses the general term Director of Elections to refer to this office.

² "Initiative 25 Has the County's Democrats Lining Up to Oppose...More Democracy," by Sean Ludwig, *The Seattle Weekly*, July 11, 2007.

In the case of creating an elected Director of Elections, the Council decided, on a party-line vote at a meeting on September 7th, not to act on the ordinance. Instead, the Council decided to put Initiative 25 on the November 2007 ballot. Supporters of an elected Director of Elections had earlier gathered enough signatures to qualify the initiative for the ballot.

Passage of Initiative 25 this year would provide for a future vote on an amendment to the County Charter that would make the Director of Elections an elected office. After that, the public would vote on candidates to fill the office.

In other words, if Initiative 25 passes in November, voters would later vote on a Charter amendment. If the amendment passes, voters would later elect a Director of Elections. In sum, the process looks like this:

1. November 2007, vote on Initiative 25. If it passes...
2. November 2008, vote on a Charter amendment. If it passes...
3. February 2009, vote for a Director of Elections.

If either steps one or two fails, the office of Director of Elections would continue as it is, filled by appointment by the County Executive with appointees confirmed by the Council.

If Initiative 25 passes and the Charter amendment is approved, the term of the first elected Director of Elections would last until December 31, 2011. Subsequent elections to fill the office of Director of Elections would occur at the 2011 primary and general elections and every four years thereafter. Holding this election in odd-numbered years ensures that the office of Director of Elections is not being contested at the same time the Director and his staff are managing elections to fill major state and national offices.

Importance of Election Integrity

The fair conduct of elections and public confidence in the result may seem obvious to most people. But in the heat of debate over a closely contested election and what, if anything, should be changed in the electoral system as a result, the fundamental reasons *why* election integrity matters may be lost. In particular, there are two reasons election integrity is so important:

1. Fairness – it is not fair to deprive citizens of the voting right by allowing double, fraudulent and improper votes to be cast. Weak standards and enforcement leave open the question of whether citizens are having their votes cancelled out by illegally-cast ballots.

2. Accuracy – our system of government depends on having a clear, agreed-upon winner emerge from an election. Otherwise, people, even those whose candidate appeared to have won, will have no confidence that the right person is exercising the powers of office. If carried far enough, lack of accuracy in election outcomes will cause faith and public confidence in our government to break down.

Most importantly, the losers of an election must be confident that the election was fair and accept the result. They can then move forward and put their efforts into winning the next time, instead of fighting past battles and questioning the legitimacy of office holders.

A History of Close Elections

Recent close elections in Washington show the importance of election integrity. Ballot results counted in King County were key to the outcome of each of these narrow races.

2000 – Maria Cantwell won over incumbent U.S. Senator Slade Gorton by a margin of 2,229 votes, out of 2.4 million cast. In a recount, Gorton held an early lead, but a count of mail-in ballots in King County determined the race in Cantwell’s favor. The outcome of this race decided party control of the U.S. Senate.

2001 – The Seattle’s mayors race was the closest in 89 years. A recount of absentee ballots decided the race in Greg Nickles’ favor by a margin of 2,700, out of 155,000 votes cast.

2002 – A \$1.75 billion Seattle monorail construction and tax plan was approved by a margin of 877 votes, out of 189,000 cast. (Seattle voters later repealed the project.)

2004 – Christine Gregoire defeated Dino Rossi in the race for governor by 129 votes (later revised by a judge to 133) out of 2.8 million cast. Rossi won the initial count and a machine recount, but a third count, by hand, resulted in a win for Gregoire.

The 2004 Election

Of recent close elections, the 2004 election for governor generated the most public controversy, and this race remains the primary motivation behind reform efforts to make the position of Director of Elections an elected office in King County. As with the earlier close elections, ballots counted in King County proved key to determining the ultimate outcome in this statewide race.

A review of the 2004 election process and the various problems that arose during the ballot recounts helps explain how the effort to pass Initiative 25 got started. A brief timeline of the election process is below, followed by a summary of the main problems the King County elections division encountered during the process.

2004 Election Timeline

November 14, 2004: Election Day

November 17: First count. In the race for governor, Republican candidate Dino Rossi led Democratic candidate Christine Gregoire by 261 votes. Because the vote totals for the two candidates differed by less than one-half of one percent, an automatic machine recount was ordered.

November 24: Second count. The machine recount resulted in Rossi winning the race by a margin of 42 votes.

November 30: The Secretary of State certifies Dino Rossi as Governor-elect.

December 8: Third count. State law allows a candidate to request a hand recount, provided the challenging candidate pays the state's expenses if the result does not change the outcome of the election. Gregoire requested a hand recount.

December 30: Hand recount results show Gregoire winning the race by a margin of 129 votes.

January 7, 2005: Rossi filed a lawsuit in Chelan County Superior Court, asking that the court nullify the election results and order a new election.

January 10: The Secretary of State certified Gregoire as governor-elect.

January 12: Gregoire was sworn in as governor.

June 6: The Superior Court rules in favor of Gregoire. Rossi announces he will not appeal the ruling on the election.

Problems in the 2004 Election

The 2004 ballot count in King County was a lengthy, complicated and controversial process. It involved numerous shifts and changes, new revelations about the number of ballots to be counted and changes in the way valid ballots were determined.

The points summarized below do not attempt to present an exhaustive account, or to describe the changes in the political and legal strategies of the two candidates. The

purpose here is to explain how the controversy over these issues contributed to the emergence of the effort to change the way King County selects its Director of Elections.

- More ballots than voters. Initial elections results showed that between 1,800 and 2,400 more ballots were counted in the election than there were people listed as having voted. This discrepancy was later reduced through the accounting process, but differences between number of participating voters and number of ballots counted was never fully reconciled.
- Felon voting. A 2005 investigation by *The Seattle Times* reviewed felony convictions dating back to 1997 and “identified 129 felons in King and Pierce counties who were recorded as having voted in the Nov. 2 election.”³
- Additionally, *The Times* analyzed voting and county court records in Pierce and King County and found:
 - 129 felons voted illegally.
 - 23 felons were considered likely to have voted.
 - Absentee ballots were sent to some ineligible felons.
 - Many felons were left on voter registers.
 - Several felons were permitted to re-register despite their ineligibility.
- Registration problems. *The Seattle Post Intelligencer* reported that thousands of duplicate ballots were issued to individuals who changed parts of their voter registration, but did not need new ballots.⁴
- Dead people voting. News reports following the election identified at least eight people who were recorded as casting ballots, but who died weeks before County officials sent mail-in ballots out to voters.⁵
- Non-matching signatures. 735 King County ballots that did not have corresponding signatures on record were included in the recount. The lack of signatures was attributed to incorrectly scanned registration forms.
- Votes from nearly 12,300 ballots had to be entered by hand, due to bar codes that could not be scanned by the voting system.
- Batches of found ballots. After election day, nearly 150 uncounted ballots were discovered in a King County warehouse. The King County Director of Elections later uncovered 573 ballots that were “accidentally rejected by election workers.”⁶

³ “Score of felons voted illegally,” *The Seattle Times*, January 23, 2005, at www.seattletimes.nwsourc.com/html/localnews/2002158407_felons23m.html.

⁴ “New election system hits glitches, records reveal,” by Michelle Nicolosi and Phuong Cat Le, *The Seattle P.I.*, January 22, 2005, at www.seattlepi.nwsourc.com/local/208988_vote22.html.

⁵ “Dead voted in governor’s race, King County investigating ‘ghost voter’ cases,” by Phuong Cat Le and Michelle Nicolosi, *The Seattle P.I.*, January 7, 2005.

- Counting unverified provisional ballots. Roughly 350 provisional ballots were fed directly into voting machines with no verification that they were legally-cast ballots.⁷
- On November 12, 2004, King County Superior Court Judge Dean Lum released the names of 929 provisional-ballot voters whose ballots were rejected because of missing or mismatched signatures.
- On March 15, 2005, the King County Director of Elections revealed that nearly 660 provisional ballots were included in the vote before the eligibility of those voters had been confirmed.⁸
- Additional ballots found in machines that had already been checked. King County election workers discovered at least 22 ballots left in counting machines that had already been checked and certified as cleared.⁹
- The King County Citizens' Election Oversight Committee (CEOC) acknowledged "the problem of losing track of voted ballots, such as finding them in the bottom of Accuvote machines that had been at poll sites" in the election.¹⁰

The Recommendation of the CEOC

As part of an effort to address election reform and help restore public confidence in its elections office, the King County Council created the Citizens' Election Oversight Committee (CEOC), made up of representatives of both political parties, policy experts and concerned citizens. I was appointed to the Committee to meet the Council's requirement that the CEOC include "one representative of an independent research and policy institute."

After extensive research and observation of election operations, the CEOC issued a report that presented six major recommendations, one of which is:

"Elect the County Auditor: Restoring public confidence in the County's elections process requires consistently excellent performance and increased accountability to voters. King County is the only county in Washington where the

⁶ "Focus: The Recount Accounts," Inside the Issues, Civics and Society, *Newsdesk.org*, December 17, 2004, at www.newsdesk.org/archives/003270.html#wash.

⁷ On-air interview by Michelle Norris with David Postman chief political reporter for *The Seattle Times*, National Public Radio, November 12, 2004.

⁸ "The 2004 Governor's Election, A Timeline of Errors, A Case for Reform," Senate Republican Caucus, at www.leg.wa.gov/documents/Senate/SRC/ElectionErrorsTimeline.pdf.

⁹ "Cascading errors shake voter confidence," by David Postman, *The Seattle Times*, December 16, 2004, at www.seattletimes.nwsourc.com/html/localnews/2002121139_voterconfidence16m.html.

¹⁰ "Report on King County Elections," King County Citizens' Election Oversight Committee, March 2006.

chief elections officer is appointed rather than elected. The majority of the CEOC recommends making the Elections Director an elected, non-partisan office.”¹¹

Most of the Committee’s recommendations were unanimous. This one, however, was adopted by a majority of votes.

A separate review, conducted by the King County Independent Task Force on Elections, also looked at the question of how the Director of Elections is chosen. The Task Force received testimony from a number of people, including current and former elected officials, urging the County to keep the office of Director of Elections as an appointed position. In this view, an appointed Director is more professional, has greater managerial and technical knowledge about how to conduct large, complicated elections and is immediately accountable to the County Executive should significant problems arise.¹²

While acknowledging this viewpoint, the Task Force ultimately concluded that an Director of Elections elected in a non-partisan race would be better because this official “would increase accountability to citizens, be better able to educate and encourage citizens to participate fully in the electoral process, be a more effective advocate for improved technology and resources, and establish an independent elections system.”¹³

The Arguments Pro and Con - Pro

This section and the next summarize the pro and con arguments being made about whether or not Initiative 25 should pass, based on material provided by supporters and opponents of the measure. Responses to the pro statements are provided by the arguments in the con section, while the pro side’s responses to some of the con statements are provided just after those statements appear in the con section.

Supporters of Initiative 25 make four main arguments in support of their position.

- 1) All of Washington’s other 38 counties have elected elections directors answerable directly to the people. Passage of Initiative 25 would make the selection of the Director of Elections in King County equally answerable to voters, and would be consistent with the rest of the state.
- 2) An elected Director of Elections would be in a stronger position to advocate, in both the County Council and the state legislature, and, if necessary, could appeal directly to the public, for budget resources and for changes in the law to improve the conduct of elections.

¹¹ Ibid, page 4.

¹² “Final Report to the King County Executive,” King County Independent Elections Task Force, February 28, 2006, page 11.

¹³ Ibid, pages 11 and 12.

- 3) An elected director would assure the public that the County is making basic reforms and that the mistakes that occurred during the 2004 election will not be repeated.
- 4) Voters recently amended the County Charter once to make the office of sheriff an elected rather than an appointed position.

Further, Initiative 25 supporters point to recent incidents that have embarrassed or harmed the public standing of the County's elections division, such as the Federal Way woman who successfully registered her dog, Duncan, as a King County voter.¹⁴

Also, members of a left-leaning activist group, ACORN, were convicted of submitting hundreds of fraudulent voter registration cards in King County. False voter names on the cards included Illinois congressman Dennis Hastert, New York Yankees relief pitcher Mariano Rivera, boxing champion Leon Spinks, fictional T.V. character Veronica Mars, and others who could not possibly be valid King County voters.

Under current procedures, elections staff entered these names into the voter registration roles with a special designation until their legal status could be verified.¹⁵ No ballots were cast based on the fraudulent registrations.

Initiative 25 supporters also point to problems in the conduct of the 2002 general election, in particular the County's delay in mailing out absentee ballots. This had the effect of eroding the voting rights of Washington residents serving in the military, many of whose ballots arrived too late to be counted in the election.¹⁶

The Arguments Pro and Con - Con

Opponents of Initiative 25 realize that every other Washington county has an elected election director, but they point out that King County is different because it is by far the largest and most urban county in Washington, accounting for nearly one-third of all the voters in the state.

They note that other high-population counties across the country have appointed election directors, and by managing elections with nearly a million voters, King County faces challenges similar to those that exist in similar large, urban counties. For that reason, other Washington counties, with their much smaller populations, cannot provide a relevant model for how King County should conduct elections.

¹⁴ "Woman registers her dog to vote; prosecutors growl," by Keith Ervin, *The Seattle Times*, June 22, 2007.

¹⁵ "Seven charged in vote-fraud scheme," by Keith Ervin, *The Seattle Times*, July 27, 2007.

¹⁶ "Secretary of State releases review of King County elections," Office of the Secretary of State, Olympia, Washington, February 13, 2003.

They further point out that under Initiative 25's procedures the election for the first elected director would take place without a primary. Since five or more candidates could run for the office, the winning candidate might be elected with 20% or less of the vote, meaning 80% or more of voters might have voted for someone else.

In response, Initiative 25 supporters say many candidates, such as President Bill Clinton or Governor Christine Gregoire, have been elected with a plurality (less than 50%) of the vote. Even so, all those elections took place after an earlier primary had narrowed the field.

Opponents' main argument seems to be that the conduct of elections should be kept in the hands of "qualified professionals" (however defined), who are answerable to the County Executive and the County Council. They say an experienced director is already in place with a professional staff that is experienced in conducting both poll and mail-in balloting. Although a little vague, this is certainly a valid point. The public wants elections run by experienced, competent and non-partisan people.

In response, supporters say that under Initiative 25 all the County's full-time elections staff would still be "qualified professionals" (probably the same ones who work there now), but they would be under the direction of a voter-approved Director. It is also likely that Director of Elections candidates who can show experience in running elections would be the ones most likely to win voters' approval.

Opponents say "independent elections professionals, editorial boards and various public 'watchdog' groups" have called for keeping the Director of Elections an appointed position, due to "the complexity, importance, and magnitude of King County Elections."¹⁷ They cite the League of Women Voters as an example of one such group.

Opponents also point to the additional public expense of the February 2009 special election required under Initiative 25. "The cost to the taxpayers for a special election," they say, "is not in their [the public's] best interest."¹⁸

Opponents also advance a partisan argument against Initiative 25, saying it represents "Republican interference with the process," and that instead "responsible citizens would approach the Council and the Executive with their concerns and try to work toward a solution, not an initiative."¹⁹

Opponents say the effort behind Initiative 25 is being advanced by "Republican officials and right-wing activists" in an effort to "politicize the management of our democratic elections system."²⁰ Far from being a needed electoral reform, Initiative 25

¹⁷ "Vote NO on I-25, Just Say NO to I-25," King County Democratic Central Committee (KCDCC), Renton, Washington, at www.kcdems.spaces.live.com/, entry for August 29, 2007.

¹⁸ "Decline to Sign I-25, Just Say NO to Initiative 25," King County Democratic Central Committee (KCDCC), Renton, Washington, at www.kcdems.net/documents/justsayno.pdf.

¹⁹ "Decline to Sign I-25, Just Say NO to Initiative 25," King County Democratic Central Committee (KCDCC), Renton, Washington, at www.kcdems.net/documents/justsayno.pdf.

²⁰ Ibid.

opponents see the measure as an attempt by Republicans to re-fight a controversial and closely-run governor's race. They say Initiative 25 "...is simply a protest by the small band of people continuing efforts to change the results of the 2004 election."²¹

These are strong statements. In response, Initiative 25 supporters point to the 74,000 voters who signed their petition, hardly a small band of people, and they say the controversy and public concern over the 2004 election has not died down with the passage of time. It is not surprising that Republicans in King County feel motivated to push for electoral reform. As mentioned above, one of the important elements of election integrity as public policy is that the *losing* side feel the election was fair and can accept the result.

Conclusion

The months-long signature drive for Initiative 25 indicates that the movement to create an elected Director of Elections extends well beyond a narrow group of disgruntled partisans. If Initiative 25 were based on the unfounded accusations of a few activists, the reform effort would have lost the interest of the public long ago.

Also, two independent task forces reviewed the 2004 election and recommended making the Director of Elections an elected office. Both independent groups were set up at the direction of Democratic elected officials and neither review was unduly influenced by Republican partisans.

Far from loss of public interest, there remains a general sense that something is seriously wrong with the reliability of elections in Washington, and that the election system in the state's largest county is in need of reform. King County election officials have not ignored these problems, and in fact have worked hard to implement numerous changes and improvements in the way elections are conducted. In addition, a statewide voter registration database is greatly improving the quality of voter information in all of the state's 39 counties.

Many people feel that these changes, while welcome, do not represent a permanent solution. Backers of Initiative 25 believe that creating an elected Director of Elections in King County is essential to providing long-term integrity and reliability in the conduct of elections in the County and in the state as a whole. Their challenge now is to take their case to the broader public, which is exactly what the upcoming vote on Initiative 25 is all about.

²¹ Ibid.

About the Author



Paul Guppy is a graduate in Liberal Arts of Seattle University and holds a Master of Arts degree in American government and public policy from Claremont Graduate University, and a Master of Science degree in political science from the London School of Economics. He completed higher education programs at The Sorbonne, Paris and at Gonzaga University in Florence, Italy. He served for 12 years in Washington D.C., most of that time as a Legislative Director and Chief of Staff in the United States Congress, before joining Washington Policy Center in 1998 as Vice President for Research. He is the author of previous Policy Center studies on civil rights, labor policy, property taxes, insurance regulation and health care reform. Paul is a member of the King County Citizens' Elections Oversight Committee.

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