

1  EXPEDITE  
2  Hearing Set:  
3       Date: \_\_\_\_\_  
4       Time: \_\_\_\_\_  
5       Judge: \_\_\_\_\_

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8                   IN THE SUPERIOR COURT OF THURSTON COUNTY  
9                   STATE OF WASHINGTON

10 ROBERT EDELMAN, a Washington citizen

No.

11                   Petitioner,

**PETITION FOR JUDICIAL REVIEW  
OF AGENCY ACTION**

12                   vs.

13 OFFICE OF SECRETARY OF STATE,

14                   Respondent.

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16                   The Petitioner, Robert Edelman, pursuant to Chapter 34.05 RCW, seeks judicial review  
17 of agency action of the Office of Secretary of State. Pursuant to RCW 34.05.546, the Petitioner  
18 states as follows:

19   I.       PETITIONER

20                   1.1       Robert Edelman resides at 29871 232<sup>nd</sup> Avenue SE, Black Diamond, WA 98010.  
21 Petitioner's legal representatives are Jonathan Bechtle, WSBA No. 39074, and Michael Reitz,  
22 WSBA No. 36159. Their mailing address is Evergreen Freedom Foundation, PO Box 552,  
23 Olympia, WA 98507.

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2 II. RESPONDENT

3 2.1 The agency who took the action to be reviewed is the Office of the Secretary of  
4 State, which is located in the Legislative Building in Olympia, Washington, with a mailing  
5 address of PO Box 40220, Olympia, WA 98504.  
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7 III. AGENCY ACTION AT ISSUE

8 3.1 The agency action at issue is the final determination issued on September 12,  
9 2008 by Elections Director Nixon Handy granting in part and dismissing in part the relief  
10 requested in a complaint filed by the Petitioner under Chapter 434-263 WAC. Mr. Handy was  
11 designated by Secretary of State Sam Reed to make the final order on behalf of the agency as  
12 prescribed in WAC 434-263-070. A copy of the final order is attached as Appendix A to this  
13 petition.  
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15 IV. PARTIES OF RECORD

16 4.1 The Petitioner and the Respondent were the only parties of record in the  
17 adjudicatory proceedings that resulted in the agency's final determination.  
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19 V. JURISDICTION AND VENUE

20 5.1 This action is a judicial review of agency action taken by the Office of the  
21 Secretary of State. The Court has jurisdiction over this matter pursuant to Part V of the  
22 Administrative Procedures Act, RCW 34.05.510 *et seq.* The filing of this petition for judicial  
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1 review in the venue of the Superior Court of Thurston County is appropriate under RCW  
2 34.05.570(1).

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4 VI. STANDING

5 6.1 The Petitioner is entitled to obtain judicial review of the agency action at issue  
6 because the Petitioner has standing and exhaustion of administrative remedies is excused.

7 6.2 WAC 434-263-020 provides standing to “any person who believes that there is a  
8 violation of any provision of Title III, including a violation which has occurred, is occurring, or  
9 is about to occur, by any state or local election official may file a complaint with the secretary  
10 under this chapter.” The term “Title III” is defined in WAC 434-263-010 as Title III of the Help  
11 America Vote Act of 2002, 42 U.S.C. §§ 15481-15485. Petitioner believes that Respondent has  
12 violated and still is violating Title III by not fulfilling his duty to ensure that the statewide voter  
13 registration database contains only eligible voters, and by allowing county election officials to  
14 delay processing of voter registration forms. Petitioner therefore satisfies the standing  
15 requirements in WAC 434-263-020.

16 6.3 Petitioner also has standing under RCW 34.05.530. As a registered voter in the  
17 State of Washington, the Petitioner is substantially prejudiced by the Respondent’s failure to  
18 prevent ineligible underage voters from registering and voting, thus diluting the lawful votes of  
19 eligible voters and reducing the accuracy of elections in Washington state. Petitioner is a  
20 registered voter who cast a ballot in the February 19, 2008 presidential primary election, the  
21 August 20, 2008 state primary election and will vote in the November 4, 2008 general election  
22 and subsequent elections. As the U.S. Supreme Court held in *Purcell v. Gonzalez*, “[T]he right of  
23 suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as



1 procedure used by county auditors and condoned by the Respondent to delay, often for months at  
2 a time, the registration applications from underage voters, ostensibly until the voter turned 18.

3 7.3 Using this evidence, Petitioner identified three duties in Title III and related state  
4 laws Respondent had violated: (1) a duty to prevent ineligible voters from being added to and  
5 allowed to remain on the state voter registration roll, (2) a duty to expedite the processing of  
6 voter registration forms, which includes a duty to reject completed registration forms from  
7 ineligible voters and (3) a duty to include a statement on the state's mail-in voter registration  
8 form warning ineligible voters not to complete the form.

9 7.4. On August 19, 2008, Administrative Law Judge Rebekah Ross made an initial  
10 determination to dismiss Petitioner's complaint. The agency reviewed her decision upon  
11 Petitioner's request, and on September 12, 2008 issued a final determination which granted relief  
12 in part by ordering the Respondent to write procedures governing the registration of underage  
13 voters and to add a warning statement to the mail-in voter registration form. The agency denied  
14 Petitioner's other requests for relief.

### 15 16 VIII. REASONS RELIEF SHOULD BE GRANTED

17 8.1 Relief should be granted by the court under RCW 34.05.570(3) because in its  
18 final determination the agency erroneously interpreted the law and made conclusions of fact not  
19 supported by evidence that is substantial when viewed in light of the record. Specifically, the  
20 Petitioner requests relief regarding the findings of law in the Initial Decision, Paragraphs 4.4, 4.6  
21 and the findings of fact in the Initial Decision, Paragraphs 3.9, 4.3 and in the Final  
22 Determination, Paragraphs 25(b)-(d). (Findings in the Initial Decision were incorporated into the  
23 Final Determination by reference in Para. 32)

1           8.2    *The Agency Erroneously Interpreted the Law.* In the final determination the  
2 agency erroneously interpreted Title III to place no duty on Respondent to prevent the entry into  
3 the state voter registration database of registrations from people who will not be 18 years of age  
4 on the next election date. Initial Decision, Para 4.4. In fact, Title III places a general duty on the  
5 agency to ensure the database contains only eligible voters.

6           8.3    The agency erroneously interpreted Title III and RCW 29A.08.651(7) to allow  
7 election officials to delay the processing of completed registrations from voters who will not be  
8 18 years of age on the next election date. *Id.* at 4.6. The state and federal laws require completed  
9 registrations to be processed in an expedited manner, including the rejection of completed  
10 registrations from ineligible voters.

11           8.4    The agency erroneously determined that Respondent had satisfied the  
12 requirements in Title III and RCW 29A.08.651(14) for state election officials to conduct periodic  
13 reviews of the state voter registration database and update or correct the data to ensure it is  
14 accurate and contains only eligible voters. While the Respondent claims its staff has belatedly  
15 started looking for ineligible underage voters on a regular basis, there are no written procedures  
16 to verify that is occurring, and by admission, Respondent is not removing ineligible voters when  
17 they are found. But the agency determined that the Respondent’s efforts were “reasonable,” and  
18 did not direct it to change these actions except for a vague requirement to “develop written  
19 procedures” without any mandate to bring its actions in line with state and federal law. *Id.* at 4.4;  
20 Final Determination, Para. 34.

21           8.5    The agency erroneously determined that Title III’s requirement for Respondent to  
22 maintain an accurate database is not violated by the Respondent’s practice of encouraging county  
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1 auditors to follow a registration procedure for underage persons that results in them placing  
2 inaccurate data in the voter registration database. Initial Decision, Para. 3.7, 3.11, 4.6.

3 8.6 *The Agency's Order is Not Supported by Substantial Evidence.* The agency made  
4 several findings of fact that were not supported by evidence that was substantial when viewed in  
5 light of the entire record. These findings are:

6 (a) In its final determination the agency concluded, “there is no evidence that  
7 this procedure [delaying registrations from underage voters] allows  
8 underage applicants to actually show up on the computerized database as  
9 registered voters.” *Id.* at 4.3.<sup>1</sup> This conclusion was based entirely on  
10 statements by Respondent’s representatives who offered no documentary  
11 evidence to back up their assertion. The only documentary evidence  
12 available on this issue was provided by the Petitioner, and it contradicts  
13 the agency’s conclusion by showing that underage voters are indeed  
14 showing up on the voter registration database as registered voters.

15 (b) In Paragraphs 25(b)-(d) of the final determination the agency determined  
16 that the exhibits provided by Petitioner did not contradict assertions  
17 Respondent had made regarding his actions to address underage  
18 registrations and voting, but these conclusions are not supported by  
19 evidence that is substantial when viewed in light of the record.

20 (c) The conclusion of fact that the Respondent “is actively working with the  
21 counties to prevent any reoccurrence” of voting by 17-year-olds is  
22 similarly not supported by substantial evidence. Initial Decision, Para. 3.9.

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24 <sup>1</sup> While located in the “Findings of Law” section of the Initial Decision, this conclusion is factual.

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XI. REQUEST FOR RELIEF

9.1 The Petitioner respectfully requests that the Court reverse the agency's final determination and order it to take the following actions:

- (a) Prevent the entry of registrations into the state voter registration database from voters who will not be 18 years of age on the date of the next election.
- (c) Conduct periodic (at least quarterly) reviews of the state voter registration database for any registered voters who will not be 18 years of age on the date of the next election, and after confirming that the voter is indeed ineligible, remove the voter from the database.
- (d) Require county election officials to reject completed registration applications from ineligible voters, prevent them from delaying completed registrations solely because an applicant is not of voting age, and require them to, if at all possible, inform any applicant rejected due to his or her age of the date on which he or she will be eligible to register to vote.

9.2 Petitioner requests legal fees and costs under the provisions of RCW 4.84.340 - .360, including the fee paid to the agency for preparation of the administrative record, as well as any other relief the Court deems just and reasonable under the circumstances.

1 DATED this 8<sup>th</sup> day of October, 2008.

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