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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. ~~88574-5~~ 70710-8

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MICHAEL CARLSON, JERROLD R. GONCE,
JEFFREY BOSSLER, RICHARD PETERSON,
MARC FORLENZA and GREG AYERS

Appellants,

v.

SAN JUAN COUNTY, a political subdivision of the State of Washington,
and THE STATE OF WASHINGTON,

Respondents,

and

ELISABETH BYERS, ROBERT JARMAN, BRIAN MCCLERREN,
JAMIE STEPHENS, LOVEL PRATT,

Necessary Parties.

Brief of Respondent San Juan County

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ASSIGNMENTS OF ERROR AND ISSUES

A. Assignment of Error on San Juan County's Cross Appeal

The trial court erred in the summary judgment order entered March 20, 2013 when it ruled that the doctrine of laches (unreasonable delay) did not apply to the post-election challenge under the separate amendment rule of San Juan County Charter section 8.31(3).

B. Issue on Cross Appeal

Whether a legal challenge to the form of an amendment to a county charter under a procedural rule of section 8.31 of the San Juan County Charter must be brought before the amendment is submitted to the voters.

(Assignment of Error on Cross Appeal)

C. Restatement of Plaintiffs' Issues on Appeal

Is a county charter amendment proposition submitted to the voters by a charter review commission required to abide by the single subject/subject-in-title rule of Wash. Const. art II, section 19? *(Plaintiffs'*

Assignment of Error A)

Does Proposition 1 violate the single-subject/subject-in-title rule of article II, section 19 of the Washington Constitution or section 8.31(3) of the San Juan County Charter? *(Plaintiffs' Assignment of Error A).*

Does Wash. Const. article XI, section 4 provide authority for a local home rule charter, independent from RCW 36.32.020 and RCW

36.32.040, to establish one multimember voting district for the county legislative authority with a qualification for office based upon residency in one of three unequal sized residency districts? (*Plaintiffs' Assignment of Error B*)

When a candidate for county legislative body is elected countywide in an “at-large election,” is it permissible to have a qualification for office that the person live in one of three unequal sized residency districts: 1) under A) the equal protection clause or B) due process clause of the United States Constitution; or 2) under the A) privileges and immunities or the B) “free and equal” elections sections of the Washington State Constitution? (*Petitioner's Assignment of Error C*)

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A trio of United States Supreme Court decisions approve of voting systems in local government providing for multi-member at-large elections combined with residency requirements from unequal sized residency districts. In *Story v. Anderson*, these Supreme Court decisions were examined with approval, but distinguished, because in that case Island County had adopted an election scheme which used in its *primary election* unequal sized *voting districts*.

Unlike the Island County system discussed in *Story v. Anderson*, voting in San Juan County operates exactly like the systems approved in the trio cases from the of U.S. Supreme Court. The election method now before this Court provides for at-large countywide voting both at the nominating primary and at the election for each of the three council members. As authorized by *Dallas County v. Reese*, each council member must reside in one of three “whole island” residency districts as a qualification for office. This means that all 12,000 voters in San Juan County vote for, nominate, and elect three council members. In this way, all voters have the same proportionate voting power at the primary and general election.

In 1990 the trio of Supreme Court decisions were examined by the Washington Attorney General in a formal opinion which approved of the

voting method used in San Juan County. AGO 1990 No. 6. This form of voting system has been used in San Juan County for all but six years. It is the method of election that was adopted in the Basic Charter in 2005. A single-district voting system was tried briefly during the years 2005 -2012 as part of the First Amended Charter, but then abandoned by the voters in November 2012.

The Plaintiffs contend that Proposition 1 was presented to the public in violation of a “single-subject” rule and that unequal sized residency districts violate constitutional principles. It is important at the outset to distinguish the issue before the Court. The “gravamen of Appellant’s complaint is that the grossly unequal [residency] districts that resulted from the passage of Proposition 1 frustrate their rights to proportional representation and equal access to government.” Plaintiffs’ Brief at p. 2. Although the words “proportional representation” are used, there is no evidence offered that the votes of Plaintiffs are diluted, that there has been invidious discrimination or that the Plaintiffs’ votes do not count as much as the votes of others. Plaintiffs mention that they are the “more conservative minority” of the county; though they are not a suspect class and there is no proof that they are a “politically cohesive, geographically insular minority.” Although Plaintiffs stake their claim on “the right to vote,” they point to no provision of Proposition 1 which

impairs the right to vote; as it does not. No complaint is made to the reduction in the number of council members from six to three; something that is plainly a legislative choice, not a judicial decision.

Plaintiffs brought this facial challenge to Proposition 1 seeking to prove invidious discrimination with theory, “Latin logic,” presumptions about voter behavior, speculation of the “chance” of what might happen in the future, and a glance at a single primary election. Such uncertain “evidence” is simply insufficient and speculative.

Plaintiffs have the heavy burden of showing that Proposition 1 is unconstitutional beyond a reasonable doubt. The Commission safely and conservatively followed controlling law in submitting a proposition to improve the county charter in which all subsections satisfy any test of rational unity or relatedness. The voters approved Proposition 1 by a margin of 55 percent in favor and 45 percent against. The will of the voters should be upheld by this Court.

II. STATEMENT OF THE CASE

At issue are sections 4.30, 4.32, and 4.33 of Proposition 1, an amendment to the “home rule charter” of San Juan County. SK CP 731-733. These provisions establish a three-person county council from “whole island districts” who are both nominated and elected to office by all voters of the county in an “at-large” election. This multimember

district method of election is virtually identical to the way that the county commissioners were elected prior to 2006, as authorized by RCW 36.32.020 and RCW 36.32.040.

San Juan County is the youngest charter county in Washington State. In 2005 the voters in San Juan County used the “home rule” charter provisions of article XI, section 4 of the Washington Constitution to adopt a “Basic Charter” (SK CP 607) and in the same election the “First Amended Charter.” SK CP 627. The Basic Charter called for a three-member county council elected at-large from three “whole island” districts. SK CP 614.

In 2005 the First Amended Charter proposed a novel experiment to increase the size of the legislative body from three members, nominated and elected countywide, to six members, with one member both nominated and elected by the voters within each of six districts. SK CP 628-29. The Basic Charter also called for a review by an elected charter review commission after five years and then at ten-year increments. SK CP 621.

Five years after adoption the county council called for the election of citizens to form a charter review commission. SK CP 655. In November 2011 voters elected twenty-one members to the charter review commission (the “Commission”) from districts which were nearly equal in

population. SK CP 676-679. The First Amended Charter limited the scope of the Commission to “determining the adequacy and suitability” of the charter to the needs of the county and to propose amendments. SKCP 621. Within this purpose, a charter review commission has broad powers to propose an amendment, retain provisions, or to repeal the charter, and to make a report of its work by way of “findings.” SK CP 621.

Like the freeholders, the Commission conducted a very public, five-month process with meetings almost every week, and rotated its meetings to locations on three ferry-served islands – San Juan, Orcas and Lopez. SK CP 786. All meetings were open to the public and the Commission invited public comment at every meeting. It published weekly reports of its work in the print papers and on-line blogs and news sources, set out written agendas for its meetings, accepted public comment at each meeting, published minutes of its meetings, published the agenda for upcoming meetings and, in the end, prepared written findings which were formally accepted by vote of the members, all in a manner consistent with good governance. SK CP 786-799. The Commission considered a full range of subjects for the organic law of the county from making no changes to a complete repeal of the First Amended Charter. *Id.*

When it was done, the Commission divided its work into three parts called Proposition 1, Proposition 2, and Proposition 3. Each

proposition showed every word that would be added or removed in underline-strikeout format. Provisions not changed were also shown in full text. SK CP 789-861. The written findings and Proposition 1 are found as appendices to this brief.

In July 2012 the Commission presented its written findings and the three propositions to the county council at a public meeting, which directed, after a brief discussion, that each proposition be placed on the ballot for a vote of the people without requesting any change to the way the propositions were to be submitted or the proposed ballot title. SK CP 704.

The entire text of the propositions were published in the voters' pamphlet together with the ballot titles, explanatory statements, and "pro" and "con" statements. SK CP 871. The voter's pamphlet was mailed to each household and also posted on line. SK CP 862.

Commission Findings 2 and 3 are particularly relevant. Finding No. 2 described the purpose and objective in moving to countywide elections. The Commission heard concerns that the members of the six-member board elected by district has been unresponsive to members living outside their districts, impairing the council's function to respond to citizens. In response, the Commission proposed countywide elections to make the voting accountability of council members congruent with the

legal obligations of council members. The Commission viewed countywide voting as a better way for people to assert control over its legislators and believed that countywide elections will better unify the county as a whole, something that one-member district elections have discouraged. SK CP 791-92.

Finding No. 3 explained the purpose and objective of using council unequal-sized “residency districts.” The Commission noticed that if countywide elections occurred without a residency district requirement, all three council members could be elected from the most populous island -- San Juan Island. The Commission determined that the unique geographical and cultural aspects of county composed of islands demanded a workable alternative. The Commission decided to propose a return to the familiar single countywide voting district for all three council members. It was noted that countywide voting at the primary and general election does not result in an unconstitutional allocation of voting power or distort representation, as every voter, regardless of district, has equal influence on the outcome at each election. SK CP 793.

Proposition 1 also included a transition plan with countywide elected council members to be elected within six months (SK CP 819) and included technical revisions and clarifications to the charter. Proposition 1

was approved by a vote of 55 percent in favor and 45 percent opposed.
SK CP 908.

Throughout the briefing before this Court and the trial court, the Plaintiffs frequently omit the word “residency” in front of the word “district.” There are two types of “districts” identified in the charter: voting districts and residency districts. SK CP 980. Appendix C and D. There is one countywide voting district and three residency districts. Proposition 1 emphasized this distinction by inserting the word “residency” before the word “district” 49 times. The largest residency district, Residency District 1 (San Juan Island) has 48.5 percent of the population (7,662); Residency District 2 (Orcas Island) has 34.2 percent of the population (5,387), and Residency District 3 (Lopez/Shaw) has 17.3 percent of the population (2,720).

Some of the freeholders who support the single-member voting districts brought this lawsuit. Mr. Bossler and attorney Ms. O’Day were freeholders in 2005. Mr. Gonce joined as a Plaintiff after an unsuccessful candidacy as charter review commission member. In 2013 the Plaintiffs added certain then-current council members and candidates for council as Plaintiffs.

Plaintiffs sought declaratory relief and an injunction to halt the elections to a three-person council in February and April 2013. SK CP

1025. An amended complaint added other plaintiffs and “necessary parties.” SJ CP 48. Judge John M. Meyer of Skagit County ruled in favor of Defendants. SJ CP 163-186. Appendix E. A request for a preliminary injunction was made to this Court and denied by ruling of Commissioner Stephen Goff dated April 2, 2013. Appendix F.

III. ARGUMENT

A. Burden of Proof and Deference to Charter Review Commission

Plaintiffs bear the heavy burden of establishing the unconstitutionality of a county charter amendment beyond a reasonable doubt. *See, Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003) (statewide initiative). The heightened scrutiny requested by Plaintiffs (Plaintiffs’ Brief p. 25) is not applicable because Plaintiffs fail to show that the “right to vote” or any other fundamental right is impaired by Proposition 1.

It is not enough that the Plaintiffs may have questions about the way in which the propositions relate to constitutional requirements. To rebut the presumption of constitutionality, it must be clear that the legislation cannot reasonably be construed consistently with constitutional imperatives. *Id.*

B. Charter Review Commission Action Is of A “Higher Order.”

In *Ford v. Logan*, 79 Wn.2d 147, 155, 483 P.2d 1247 (1971), the Court recognized that “the act of amending or repealing the basic organic instrument of government is of a higher order than the mere enactment of laws within the framework of that structure.” *Ford v. Logan* is important because the Court expressed deference to the process of using an elected commission to develop “home rule” charter proposals in three steps. After comparing the similarities of process for a charter amendment and the process for constitutional amendments, the *Ford* court held that using independently elected officials and voter approval in the charter amendment process safeguards against hasty and emotional action. *Ford v. Logan*, 79 Wn.2d at 155-157.

The significance of *Ford v. Logan* is that if a charter review commission can propose to repeal an entire charter in a single proposition, it certainly can bundle amendments to an existing charter in one or more propositions, each of which is far less than a total repeal of the charter.

Article XI, section 4 of the Washington Constitution authorizes home rule charters. A charter may provide that local elections are conducted in a way that is different from state law, making the issues involving RCW 36.32.020, RCW 36.32.040, and RCW 29A.76.010 moot

and meaningless. These statutes apply to code counties, not charter counties. The fact that RCW 36.32.020 and RCW 36.32.040 are shown in the charter provides a template, not an enabling authority. Indeed, if county charters could not vary from the form of government established in general state laws, there would be no obvious reason for using the home rule charter form of government.

In *State ex rel. Carroll v. King County*, 78 Wn.2d 452, 456-58 474 P.2d 877 (1970) the Court upheld King County charter provisions for conducting local elections at a times different from those specified in state statute. In so ruling, the Court construed the state constitution to confer broad authority upon counties in adopting their own charters, particularly as to the manner of electing local officials. *Id.* at 456; *see also Henry v. Thorne*, 92 Wn.2d 878, 880-81, 602 P.2d 354 (1979) (upholding a county charter provision under which the timing of elections to fill vacancies in local offices differed from state statute).

C. Article II, Section 19 of the Washington Constitution.

1. Article II, section 19 applies only to state laws.

Article II, section 19 states: “No bill shall embrace more than one subject, and that shall be expressed in the title.” Article II, section 19 applies to “bills” of the Washington Legislature and statewide initiatives, not county charter propositions.

Plaintiffs contend article II, section 19 of the Washington Constitution applies to local charter amendments because of the significance of the charter as the “organic law” of the county. Article II, section 19 has never been applied by the Supreme Court to local ordinances or charter provisions. In *City of Seattle v. Buchanan*, 90 Wn.2d 584, 607, 584 P.2d 918 (1978) the Court said: “The principle involved in that case [single-subject, subject-in-title] has no application here. Article II, section 19, applies only to the legislature, and it is not contended otherwise.”

Counties are discussed in Wash. Const. article XI and the home rule charter powers are authorized in article XI, section 4. The Constitution does not include a single-subject rule in article XI, section 4. Instead it uses a procedural rule, the “separate amendment” rule, which states: “In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others.”

Section 19 of article II is nested with other sections which clearly apply to the state measures and not local measures.¹ The Washington

¹ That the provisions in article II apply to the state legislature is evident in the text of article II. Sections 18-20 of article II define the term “bill” by reference to laws of the state legislature only:

Legislature enacts “bills”. A county adopts its laws in “ordinances.”

Article II is not applicable to an amendment to the county charter.

If this Court confirms that article II, section 19 does not apply to Proposition 1, the remainder of this section III. C is unnecessary.

2. Proposition 1 does not violate article II, section 19.

Plaintiffs use the wrong framework for analyzing article II, section 19, and disregard common rules of statutory construction and the decisions of the State Supreme Court. Any measure to enact, repeal or amend a charter will always deal with a single subject – the county charter.

Last year, the Washington Supreme Court upheld an expansive initiative regarding liquor that led to the privatization of the liquor market and funding for liquor prevention programs. In doing so the decision confirmed the analysis for questions regarding article II, section 19 as follows:

There are two distinct prohibitions in article II, section 19: (1) the single-subject rule and (2) the subject-in-

SECTION 18. STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

SECTION 19. BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

SECTION 20. ORIGIN AND AMENDMENT OF BILLS. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

title rule. For the reasons discussed below, we find that I-1183 does not violate either rule.

1. The single-subject rule

The single-subject rule aims to prevent the grouping of incompatible measures and to prevent “logrolling,” which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an unrelated law.

In determining whether legislation contains multiple subjects, we begin with the title of the measure. The ballot title of an initiative is the relevant title for analysis under article II, section 19, not the legislative title, if any exists. A ballot title consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law. RCW 29A.72.050. A title may be general or restrictive; in other words, broad or narrow, since the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute. In assessing whether a title is general, it is not necessary that the title contain a general statement of the subject of an act; a few well-chosen words, suggestive of the general subject stated, is all that is necessary.

The parties agree that the ballot title is general, and we find so as well. I-1183's title indicates that it generally pertains to the broad subject of liquor. *See [Amalgamated Transit, 142 Wn.2d 183] at 208–11, 11 P.3d 762, 27 P.3d 608 (providing examples of general and restrictive titles).*

Where a title is general, all that is required by the constitution is that there be some “rational unity” between the general subject and the incidental subdivisions. The existence of rational unity or not is determined by whether the matters within the body of the initiative are germane to the general title and whether they are germane to one another. There is no violation of article II, section 19 even

if a general subject contains several incidental subjects or subdivisions. Moreover, for purposes of legislation, “subjects” are not absolute existences to be discovered by some sort of a priori reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.

Washington Ass'n for Substance Abuse and Violence Prevention v. State,
174 Wn.2d 642, 655-656, 278 P.3d 632 (2012) (internal citations omitted).

3. The title to Proposition 1 is general.

The ballot title for Proposition 1 states:

The San Juan County Charter Review Commission has proposed charter amendments to reduce the number of Council members. This measure would reduce the County Council from six (6) members nominated and elected by district to three (3) members, each residing in a separate district but nominated and elected by the entire County. This measure also includes technical revisions and clarifications to the charter and a transition plan that provides for implementation at special elections in April 2013. Should this proposal be:

Plaintiffs do not analyze whether the title is general or restrictive.

The lesson of *Amalgamated Transit, supra*, is that a title is general when it uses words that seem to narrow its scope but, in fact, covers a broad topic. 142 Wn.2d 183, 216-217. The title concerned “charter amendments” proposed by the Commission. Indeed, section 8.11 of the First Amended Charter says the Commission is to review the charter for its “adequacy and suitability” to the needs of the county. SK CP 816. Therefore, the object

is the general topic of “charter amendments regarding the suitability of the charter for the county.”

Proposition 1 was one of three propositions submitted to the voters on the same ballot. By separating the amendments into three propositions, it was necessary to provide words distinguishing one from the other. Thus, the title to Proposition 1 started with the charter being amended (a general statement) and then mentioned more restrictive aspects including: (1) the reduction in size of the county council from six members to three members; (2) a requirement for council members to reside in a district; and (3) a countywide nomination and election method; and (4) referenced technical revisions and clarifications to the charter.

A mix of general and restrictive words was used for the title because general words alone would not have allowed voters to distinguish one proposition from the other. Thus, under the rule of *Amalgamated Transit*, the title is treated as “general.” Even if the title is found to be “restrictive,” it will not change the outcome for the central features of Proposition 1 were described and the incidental items not described in detail can be severed and the intent of the voters upheld, as discussed in the remedy section, *infra*.

4. Rational Unity and Classification of Changes.

When a title is general, all that is required is a showing that there is some “rational unity” between the general subject and the incidental subdivisions. Rational unity exists because of the natural and reasonable connection between the First Amended Charter and the changes in Proposition 1. *Id* at 656. The subject in Proposition 1 was the improvement in the First Amended Charter. If the ten articles in the Basic Charter were adopted in a single measure, as a single subject, then an amendment to the Basic Charter is naturally and reasonably connected to the general subject of amendments to the First Amended Charter. This linkage between subject and the basic law being amended was recognized in *Water District 105 v. State*, 79 Wn.2d 337, 342, 485 P.2d 66 (1971) citing *Kueckelhan v. Federal Old Line Ins. Co.*, 69 Wn.2d 392, 418 P.2d 443 (1966); and *Robison v. Dyer*, 58 Wn.2d 576, 364 P.2d 521 (1961).

In *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308 (1971) the court explained that it “has never favored a narrow construction of the term ‘subject’ as used in Const. Art. 2, Sec. 19. We have consistently held that a bill may properly contain one broad subject embracing many sub-subjects or subdivisions.” In *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962), the court added that the analysis

should take into account the general purpose of the law and the practical problems of efficient administration.

The breadth of topics that are related and incidental and, therefore, allowed has been apparent since the decision in *Fritz v. Gorton*, 83 Wn.2d 275, 517 P.2d 911 (1974). There the court upheld under the rational unity test an initiative with a wide variety of subtopics in a broadly worded measure, including: disclosure of campaign financing, limitations on campaign spending, regulation of lobbying activities, regulation of grass roots educational activities, disclosure of financial affairs of elected officials, inspection of public records and the creation of the public disclosure commission. *Id.* 83 Wn.2d at 290-91.

Rational unity is easily found in the six sections of Proposition 1 that are logically related to the objective of reducing the size of the county council from six to three to be elected countywide instead of by district. These six changes are summarized in the table below:

TABLE 1 – SIX CHANGES WITH A LOGICAL RELATIONSHIP

Section	Title	Short Description of Amendment
4.20	Qualifications	Qualify for position by residing in residency district
4.30	Legislative Body – Districts	Makes three “whole island” residency districts
4.31	Legislative Body – Terms	Provides staggered terms for three instead of six; no change to four-year duration of term
4.32	Legislative Body – Nominations	Provides for nomination countywide, not by district
4.33	Legislative Body – Elections	Provides for election countywide and not by district
4.34	Legislative Body – Districting Committee	Deletes obsolete provisions for districting committee

All six sections are intertwined with the object and purpose expressed in the findings of the Commission to reduce the size of the county council and provide a voting method that will unify the people of the county rather than divide them. It is natural there are subsections that are intertwined and each section needs to be changed at the same time to assure that there is a cohesive document. Probably the best evidence of the logical relationship is that these very same provisions were changed in the First Amended Charter in 2005. Compare SK CP 627 to SK CP 724. To demand that future changes must be voted on separately could lead to anomalous results, and a disjointed and unworkable charter.

Four changes correct simple misstatements or improve wording in a way that has no legal effect. These are summarized in the table below:

TABLE 2 – FOUR SECTIONS WITH NO CHANGE IN LAW

Section	Title	Short Description of Amendment
1.40	Name, Boundaries, County Seat	County boundaries defined by state law, not county council per Wash. Const.
3.20	Executive Offices	Powers and duties defined by reference to statute and Constitution instead of “as in the past”
4.10	Election Procedures	Prosecuting attorney election per state law
8.31	Charter Amendment – Procedures	Reword to combine subsections 2 and 3; no change in meaning

There was no need to present each of these sections in separate propositions because as a matter of law, they are not a second subject. Each of these four changes is allowed under the rule of *Farris v. Munro* and *Pierce County v. State*. In *Farris v. Munro*, 99 Wn.2d 326, 622 P.2d 821 (1983), the court looked to the substance of Constitution Amendment 56 and approved changes to the language regarding divorce and lotteries that involved new sentence structure and upheld the change because the word changes did not alter the meaning of the law. *Id.* at 332. This principle was also followed in *Pierce County v. State*, 150 Wn.2d 422, 78 P.3d 640 (2003), where the court declined to find a second subject in precatory or intent statements that did not have the force of law. The lesson of *Pierce County* is that a second subject will not be found when the amendment is ‘devoid of any legal effect.’ *Id.* at 647.

Three sections address minor incidental amendments that are allowed as a matter of administrative convenience. They are summarized in the table below:

TABLE 3 – THREE MINOR INCIDENTAL CHANGES

Section	Title	Short Description of Change
4.70	Commencement of Terms of Office of County Officers	Changed from 2 nd Monday in January to December 31, 2012.
8.20	Charter Review Commission Elections Procedures and Period of Office	Clarifies that next commission in 2020, not 15 years after 2005; commission members are elected in even-numbered year; clarifies that candidate must be voter and resident, not only resident for five years; term ends at the earlier of one year or time of submitting proposition to county council. Clarification or technical.
8.21	Vacancy of Charter Commission	Beginning in 2021, and intermittently when the commission meets, a vacancy occurs automatically when four (4) consecutive meetings are missed for any reason, not three (3) meetings missed without notice to chair. No change is made to filling the position with the runner up in the election, but a provision is added to allow a majority to vote to leave the seat vacant. All technical changes.

Each incidental change is extraordinarily narrow and limited and was appropriately described in the ballot title as “technical” or “clarifications.” Section 4.70 alters the commencement date of office by about a week, but does not change the term of office. The changes for a future charter review commission in sections 8.20 and 8.21 are contingent; they may only take effect only if certain conditions occur, and then only

during the time that a charter review commission is in effect at ten-year intervals. The adjustment to the rules regarding abdication of office by a future commission member has no effect until that commission member misses four consecutive meetings in 2021 or at 10-year intervals thereafter. Taken together these subsections are “incidental” and of such a minor or uncertain consequence that they are not a “second subject.” They are not the unrelated subjects that Plaintiffs contend they are. *See, Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d at 636.

These incidental changes are included in Proposition 1 because they meet the general purpose of the Commission. To present them separately would be unnecessary and present practical problems of efficiently submitting the proposition to the voters. The Court should defer to the decision of the Commission to group the changes into a single proposition.

5. History shows the public expects incidental amendments.

The historical context is relevant in assessing whether the public would expect to find incidental subsections in a charter amendment. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 573, 901 P.2d 1028 (1995) (J. Talmadge, *concurring*). In 2005 the First Amended Charter included two incidental topics not mentioned in the ballot title: (1) changing the name of the legislative body to “county

council;” and (2) providing for a local districting committee to meet after the 2010 census to revise county council district boundaries. Compare SK CP 601 and SK CP 627-629. The incidental changes in Proposition 1 are similar to incidental changes in the First Amendment and would be expected by the voters.

6. Subject in Title.

The second part of article II, section 19 is the subject in title rule.

The purpose of the subject-in-title rule is to notify members of the legislature and the public of the subject matter of a measure. A title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law. The title need not be an index to the contents, nor must it provide details of the measure. Although a measure's title can be broad and general—without any particular expressions or words required—the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that no person may be deceived as to what matters are being legislated upon. A title which is misleading or false is not constitutionally framed. Any objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.

Washington Ass'n for Substance Abuse, 174 Wn.2d at 660-661

(internal citations omitted).

Proposition 1 easily satisfies the subject-in-title rule. The words used were honest and not misleading, and would have given any voter notice to inquire further into the explanatory statement or the text of the

proposition for additional details. Because these measures were submitted at a general election, each household received a voter's guide with the complete text of each proposition. With ballots arriving by mail, there was plenty of time for a voter to be informed of every word change in Proposition 1.

Plaintiffs ignore many words of the title when they assert it only "deals with the reduction in the number of council members ... [and] county-wide voting." Plaintiffs' Brief p. 15. Plaintiffs also contend the unequal population of the residency districts should have been mentioned, but the rules do not require every detail to be listed. A reference to the relative population of each residency district was unnecessary because the ballot title correctly explained that voting power would be shared "countywide." Voting power is a function of the population of the single voting district, not where a candidate lives to qualify for office. The fact that council members must reside in a district (i.e., that there are in fact "residency districts") is clearly stated in the title and anyone (such as future candidates) who was curious to know about the boundaries or population or any other fact about any residency district could examine the text of section 4.30.

Unequal population of the residency district is not a second subject, which requires it to be called out specially. It is a feature of the residency district. This feature was also not mentioned in 2005, the ballot title for the First Amendment. SK CP 602.

7. Logrolling label should be rejected.

Nothing unrelated to the charter was put before the voters in Proposition 1. Plaintiffs misstate the law when they write that logrolling occurs when “provisions are not revealed to the voter who just reads the title to the measure.” Plaintiffs’ Brief p. 7. Plaintiffs have jumbled and misquoted from the concurrence of Justice Talmadge at 127 Wn.2d at 567. In addition, Plaintiffs fail to mention that Justice Rosellini was dissenting when he wrote about the policies against logrolling in *Fritz v. Gorton*, 83 Wn.2d 275, 333. Plaintiffs’ Brief p. 10.

Ballot titles are intended to be short summaries and require only language to prompt an inquiring mind to examine the law further. The rule is stated as follows:

Const. Art. 2, § 19 is to be liberally construed in favor of the legislation. The title to a bill need not be an index to its contents; nor is the title expected to give the details contained in the bill. A title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.

Washington Ass'n for Substance Abuse and Violence Prevention, 174 Wn.2d at 660, 278 P.3d 632. This rule makes Plaintiffs' reliance on Justice Talmadge's concurrence untenable.

Plaintiffs argue "logrolling" occurred because the language of the ballot title "fails to notify voters that future [residency] districts would be disproportionate." Plaintiffs' Brief p. 13. This is incorrect. The title said that voting elections would be "countywide" and that council members would be required to reside in a district. A curious voter would naturally be prompted by this language to examine the full text and see the fact that whole islands are described and that an unequal number of precincts are included in each district. SK CP 808.

Plaintiffs invent a new legal theory: logrolling by *omission* of a preferred word in the title. This is not the law. Moreover, such a rule is contradicted by strict word limits for a ballot title (RCW 29A.36.071) and is contrary to law that allows interrelated and incidental subjects to be included in a measure.

D. Charter Section 8.31(3).

Plaintiffs devote just one page to section 8.31(3) arguing simply that section 8.31(3) "is San Juan County's own version of the 'subject in title rule.'" But, section 8.31(3) has different wording, and it requires a different analysis. A side-by-side comparison of the text of article II,

section 19; article XXIII, section 1; and section 8.31(3) shows that section 8.31(3) is a “separate amendment” rule with a proviso that allows related subsections.

TABLE 4 – COMPARISON OF TEXT

Charter Sec. 8.31(3) “The Separate Amendment and Interrelated Subject Rule”	Art. XXIII, Sec. 1 “The Separate Amendment Rule”	Art. II, Sec. 19 “The Single-Subject/ Subject-In-Title Rule”
“If more than one amendment is submitted on the same ballot, they shall be submitted in such a manner that people may vote for or against the amendments separately; provided an amendment which embraces a single or inter-related subject may be submitted as a single proposition even though it is composed of changes to one or more articles.”	“If more than one amendment be submitted, they shall be submitted in such a manner that the people may vote for or against such amendments separately.”	“No bill shall embrace more than one subject, and that shall be expressed in the title.”

The phrase preceding the proviso is nearly identical to the “separate amendment” rule found in article XXIII, section 1 of the Washington Constitution. This makes cases construing article XXIII, section 1 most applicable, not the cases construing the single-subject rule. *See, e.g. Cooney v. Foote*, 83 S.E. 537 (Ga. 1914) (holding single-subject rule did not apply to constitutional amendment); and *Charter Review Com'n of Orange County v. Scott*, 647 So.2d 835 (Fla. 1994) (holding single-subject rule does not apply to charter commission action).

The proviso to section 8.31(3) specifically allows a proposition that embraces a single or interrelated subject. Thus, the question before the Court is whether the changes in Proposition 1 are “interrelated.” This is similar to the test that applies to constitutional amendments:

“The propositions submitted must relate to more than one subject, and have at least two distinct and separate purposes not dependent upon or connected with each other.”

Farris v. Munro, 99 Wn.2d 326, 331 (1983).

A city charter with a separate amendment rule did not prevent the broad restructuring of a library department including the form of its managing body, the manner in which members are selected, and their powers and authority to expend funds was upheld in *State v. Ripliner*, 30 Wn. 281, 70 P. 748 (1902). The amendments proposed in Proposition 1 share the same unity of subject which makes the decision in *State v. Ripliner* persuasive.

Gottstein v. Lister, 88 Wash. 462, 470, 153 P. 595 (1915) concerned the Seventh Amendment, which amended article II, section 1 (vesting legislative power in the Senate and House of Representatives) to allow for exercise of legislative power by initiative and referendum, and also withheld veto power of the governor from measures initiated by or referred to the people. Notwithstanding the fact that the amendment

covered two subparts the court concluded that multiple changes were evident in a single “object and purpose.” *Id.* at 479.

Perhaps *Fritz v. Gorton, supra* is the best example of the way the concepts of inter-relatedness, rational unity and logical relationship work together. There, the Court rejected a challenge to an initiative that encompassed numerous subtopics on the grounds that the subtopics were reasonably related, they bore a close interrelationship to the main purpose of the measure, and there was a rational unity of purpose among the incidental subdivisions. *Fritz v. Gorton, supra*, 83 Wn.2d at 290-91.

Plaintiffs mention “logrolling” in this context too, but the policy against “logrolling” has not been part of the jurisprudence of the separate amendment rule.² At least three states have expressly rejected the policy considerations of “logrolling” in their analysis under a similar separate amendment rule. *See, Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 342, 348 (2013), *Charter Review Com'n of Orange County v. Scott*, 647 So.2d at 837; and *Cooney v. Foote*, 83 S.E. at 540.

E. Cross Appeal – Late Challenge to Sec. 8.31(3).

Plaintiffs waited until after the passage of Proposition 1 before they challenged Proposition 1 under section 8.31(3), the procedures for

² The word “logrolling” is mentioned as *dicta* in *Farris v. Munro*, 99 Wn.2d at 332, but only because the court recognized it was not present.

submitting charter amendments. This was too late. There is a strong public interest in the finality of elections that requires any challenge to election procedure or ballot titles be brought when first known and then prosecuted swiftly. *LaVergne v. Boysen*, 82 Wn.2d 718, 721, 513 P.2d 547 (1973) (“There exists a substantial public interest in the finality of elections, necessitating prompt challenges.”) The legal and policy reasons behind this rule is explained in *Corpus Juris Secundum* as follows:

Extreme diligence and promptness are required in election-related matters, particularly where actionable election practices are discovered prior to the election. Therefore, laches is available in election challenges. In fact, in election contests, a court especially considers the application of laches. Such doctrine is applied because the efficient use of public resources demands that a court not allow persons to gamble on the outcome of an election contest and then challenge it when dissatisfied with the results, especially when the same challenge could have been made before the public is put through the time and expense of the entire election process. Thus if a party seeking extraordinary relief in an election-related matter fails to exercise the requisite diligence, laches will bar the action. ...

29 *CJS Elections* Section 434 (citations omitted; emphasis added).

There are two elements to laches: (1) inexcusable delay and, (2) prejudice to the other party from such delay. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 241, 88 P.3d 375 (2004). The prejudice in this case has a similarity to the prejudice described in *LaVergne*. If a successful challenge was timely, the Commission could

have met and resubmitted the matter to the voters; or a superior court could have directed the ballot title be prepared a certain way. That is no longer possible. It is not possible to “reconstitute” the Commission. It has expired according to the terms of the charter section 9.20 and a new charter review commission will not be selected by the voters until 2020.

It is fair to require Plaintiffs to act promptly. The claim of defect was known to Plaintiffs on June 9, 2012, the date the Commission adopted its resolution, findings and propositions. A total of 110 days elapsed between June 9 and September 27 – the date ballots were sent to the printer. If Plaintiffs had acted sooner they could have avoided the challenge under section 8.31(3). They could have taken remedial action by notifying the chair of the Commission of their concerns, writing letters or emails, testifying before the Commission, testifying before the county council or others. None of these steps were taken.

Section 8.31(3) is part of a section titled “Charter Amendment Procedures.” A pre-election legal challenge on the procedural issues is allowed by *Coppernoll v. Reed*, 155 Wn.2d 290, 298-299, 119 P.3d 318 (2005). “Our courts have entertained preelection review of the second type of challenge, a ballot measure's noncompliance with procedural requirements, including challenges to the requisite number of signatures, timing of filing, and ballot titles. (citations omitted).” Alternately,

Plaintiffs could have initiated a ballot title challenge under RCW 29A.36.090.

Plaintiffs acknowledged that they were following the work of the Commission. Plaintiff Mike Carlson told of his extensive involvement in county matters and admitted that he was aware of the propositions. SK CP 471. Mr. Bossler also admitted that prepared materials showing the voting strength of voters under the Commission's propositions. SK CP 457. Plaintiff Gonce was an unsuccessful candidate for the Commission, as was Plaintiffs' attorney Stephanie O'Day. Moreover, the adoption process included very public steps that provided *constructive knowledge* to the Plaintiffs, just like in the case of *Lopp v. Peninsula School District 401*, 90 Wn.2d 754, 760, 585 P.2d 801 (1978). Plaintiffs' failure to attend meetings of the Commission to express their objection or start a pre-election challenge demonstrates a strategy of deliberate delay which equity should not reward. *See.e.g. Lopp* at 805.

F. Invalidation is the Wrong Remedy.

Plaintiffs have asked for invalidation of Proposition 1, but such a harsh remedy is only appropriate under a very narrow interpretation of article II, section 19, and is not required or appropriate under these facts.

Proposition 1 has a severability clause in section 9.10 which states:

The provisions of this Charter are severable. If any provision shall be declared unconstitutional or inapplicable, it shall not affect the constitutionality or applicability of any other provision of this charter.

SK CP 818. A severability clause indicates an intent that the remainder of the act should apply without the invalid portions. *State v. Broadaway*, 133 Wn.2d 118, 128, 942 P.2d 363 (1997). If necessary, the Court should apply the severability clause.

Severance is appropriate in this situation:

A provision can be severed if two criteria are met: Where proposed legislation with a single subject title has multiple subjects, those matters not encompassed within the title are invalid but the remainder is not unconstitutional if (a) the objectionable portions are severable in a way that a court can presume the enacting body would have enacted the valid portion without the invalid portion, and (b) elimination of the invalid part would not render the remainder of the act incapable of accomplishing the legislative purpose. A saving clause may indicate legislative intent that the remainder of the act would have been enacted without the invalid portions.

Id. at 128 (citations omitted). Plaintiffs object to very specific provisions that were described as technical revisions and clarifications in the title (changes to sections 4.70, 8.20, 8.21 and 8.31). Each provision may safely be severed without rendering the interfering with the basic structure of county governance. Finally, the county council has yet to review the manner in which its advisory committees are structured and it is premature

to say that such committees have “disproportionate” power based upon residency district. Plaintiffs’ Brief p. 36.

G. Equal Protection.

1. The United States Supreme Court Decisions.

Plaintiffs claim that Proposition 1 results in “unequal districts” obfuscates the fact that the *voting district* for each county official is the one countywide *voting district*. Plaintiffs’ true complaint under equal protection asserts that the qualification of council members by residency districts combined with a countywide, at-large voting method violates the “one person, one vote” principle. Plaintiffs’ Brief p. 27.

The county’s response is that the “one person, one vote” principle is not offended because “the district” for determining voting equality is *the entire county*, not residency districts. The residency districts are qualifications for office, not “voting districts.” Each active voter in San Juan County is given the same choice and his or her vote carries the same weight. There are three council members and every voter in the entire county receives a ballot to vote for each council member. This is the way “at-large” elections work.

In *Brower v. State*, 137 Wn.2d 44, 56, 969 P.2d 42 (1998) the Washington Supreme Court recognized that statewide (at-large) voting of a referendum regarding stadium funding does not create a circumstance

where one vote outweighs another. The Court observed that “Mr. Brower’s vote in that election was not impeded in any way.” The same conclusion should be made in this case involving countywide voting.

During the civil rights era of the 1960s and 1970s, the “one person, one vote” question was taken up by the United States Supreme Court on several occasions in connection with other multimember districts with unequal size residency districts and in apportionment cases under the Voting Rights Act. Since then the high court has not wavered from its acceptance of such an at-large voting system absent some proof of discriminatory intent or dilution of voting rights of a suspect class. This is a facial challenge to Proposition 1. Plaintiffs offer no proof; indeed they make no allegation or claim they belong to a suspect class or that there has been any discriminatory intent in the adoption of Proposition 1. The voting method set out in Proposition 1 is “per se” constitutional.

“One-person, one-vote” is a well-established principle of constitutional law. In *Eugster v. State*, 171 Wn.2d 839, 843-844, 259 P.3d 146 (2011) the Washington Supreme Court held that “[t]he equal protection clause of the United States Constitution requires that voting districts in legislative and administrative elections be apportioned so that each district has, as nearly as practicable, an equal population—the so-called one-person, one-vote principle.”

On at least three occasions, the United States Supreme Court has ruled that the one-person, one-vote requirement of the Fourteenth Amendment is not violated by an at-large election plan for a governmental unit that requires those elected to be residents of subdivisions within the unit that are unequal in size. *Dallas County v. Reese*, 421 U.S. 477, 95 S.Ct. 1706 (1975) (county commission); *Dusch v. Davis*, 387 U.S. 112, 87 S.Ct. 1554 (1967) (municipal council); *Forston v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498 (1965) (state senate).

In *Forston* the Supreme Court upheld an election plan that divided large counties into several districts and then allowed the entire county to elect all candidates from that county. The court held there was no invidious discrimination and no problem with equal protection even though some districts comprised as little as 18 percent of the population (about the same percentage as the Lopez/Shaw Residency District). The court explained that the representative in this type of system is accountable and “he must be vigilant to serve the interests of all the people in the county, and not merely those of people in his home district; thus, in fact, he is the county's and not merely the district's senator.” 379 U.S. at 438.

In *Dusch*, the Supreme Court made it clear that residence requirements are valid even when established for subdistricts of

substantially unequal population. 387 U.S. at 112. *Dusch* is most helpful to this case because the city and county leaders were addressing diverse tourism, urban and rural interests when the City of Virginia Beach was combined with the county of Princess Anne. These are similar problems mentioned in the Findings of the Commission. Under the *Dusch* plan, seven members were elected by voters of the entire city with one being required to reside in each of the seven boroughs. The population of the seven boroughs ranged in size from just 733 persons in Blackwater to 29,048 persons in Bayside. Justice Douglas found no invidious discrimination and upheld the plan stating, “The principal and adequate reason for providing for the election of one councilman from each borough is to assure that there will be members of the City Council with some general knowledge of rural problems to the end that this heterogeneous city will be able to give due consideration to questions presented throughout the entire area.” *Id.* at 116.

In *Dallas County*, 421 U.S. 477, the Supreme Court in a unanimous, *per curiam* opinion, reviewed an election plan for the county including Selma, Alabama, which provided for countywide balloting for each of the four commission members, but required that a member be elected from each of four “residency districts.” The constitutional claim was premised on the fact that the populations of the four districts varied

widely; with the result that only one resident of the city of Selma can be a member of the commission, although the city contains about one-half of the county's population. The residency districts varied in population from about 7,000 to about 29,000. *Id.* at 478, fn. 3. After reviewing the decisions in *Forston* and *Dusch* the court held that there can be no facial challenge to such an election plan and that there must be proof of dilution of a voter's interest.

We think it clear, however, that *Dusch* contemplated that a successful attack raising such a constitutional question must be based on findings in a particular case that a plan in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population. Rather than basing its decision on a factual conclusion of this sort, the Court of Appeals relied on a theoretical presumption to reach its determination that residents of Selma were victims of invidious discrimination. That theoretical presumption is that elected officials will represent the districts in which they reside rather than the electorate which chooses them. But that is precisely the proposition rejected in *Dusch*.

Id. at 480-481.

This trio of United States Supreme Court decisions ending with a *per curiam* decision has defined the law of equal protection in unequal-sized voting districts now for over 40 years. Proposition 1 is consistent with these decisions and, therefore, there is no constitutional infirmity.

Plaintiffs' reference to Wash. Const. article II, section 43, subsection 5 should be disregarded as that subsection specifically pertains to state legislative districts, not to county legislative districts.

2. Plaintiffs have not shown proof of invidious discrimination or vote dilution.

To prevail in a vote-dilution case with an at-large system, the Plaintiffs must demonstrate: (1) the existence of a discriminatory purpose either in the enactment of an election scheme or its maintenance, and 2) a differential impact on the voting power of a minority protected by the Fourteenth or Fifteenth Amendments. *Rogers v. Lodge*, 458 U.S. 613, 618-19, 102 S.Ct. 3272 (1982); *Mobile v. Bolden*, 446 U.S. 55, 66, 100 S.Ct. 1490 (1980). In a case under the Voting Rights Act, a minority group would also need to: 1) demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district; 2) show that it is politically cohesive; and 3) that the majority votes sufficiently as a bloc to regularly defeat the minority group's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 49, 106 S.Ct. 2752 (1986).

Under any test, Plaintiffs' proof is lacking. To begin, the "minority" Plaintiffs complain about is their own self-described "conservative minority," (Plaintiffs' Brief at p. 24) not a recognizable

protected minority group. Plaintiffs do not allege and they cannot show any discriminatory purpose in the adoption of Proposition 1. The findings of the Commission deny such discriminatory purpose and, instead, the purpose was to prevent unwanted “balkanization” of interests that occurs from the geographical separation that is unavoidable in an island community and to make council members more responsible to those living outside their district. In the tradition of unifying the community, it was expressed that countywide elections are preferred. Finally, Plaintiffs point to only to the number of candidates in one primary election as “proof” of discrimination.

Plaintiffs rely on bare assertions, and mathematical theory. But, bare assertions are insufficient to defeat summary judgment. In *Valladolid v. City of Nat'l City*, 976 F.2d 1293, 1297 (9th Cir. 1992), summary judgment was granted to respondents in a case brought by a group of Hispanic voters under the Voting Rights Act because the evidence offered by plaintiffs was an expert report which failed to present any evidence that Hispanic candidates lost city council elections as a result of a white bloc voting against them. Plaintiffs' Brief does not and cannot cite to the record to show proof of discriminatory results below because no facts were offered to support any conclusion of disproportionate representation.

As stated in *Dallas County v. Reese*, 421 US at 480-481, Plaintiffs cannot simply rely on a “theoretical presumption.” Nor, can Plaintiffs rely on a simple arithmetic calculation as is alleged in the Complaint. Indeed, an at-large election system has been ruled to provide “mathematical perfection” of voting power. *David v. Garrison*, 553 F.2d 923, 926 (5th Cir. 1977).

3. *Story v. Anderson* is not applicable.

Plaintiffs mistakenly misplace heavy reliance on *Story v. Anderson*, 93 Wn.2d 546, 611 P.2d 764 (1980). The Island County primary tested in that case was very different because it resulted in electors within the unequal size *voting district* choosing the top candidates for a countywide office at a primary election. The Court acknowledged the United States Supreme Court decisions in *Dusch v. Davis* and *Dallas County v. Reese*, discussed *supra*, but distinguished them on the facts in this passage.

In *Dusch* and *Dallas County*, as in the present case, the election schemes imposed a residency requirement, and specified that each of the elected county officers must live in a different district of the county. The court held in these cases that such a scheme was not unconstitutional because the districts were used “merely as the basis of residence for candidates, not for voting or representation.” *Dusch*, 387 U.S. at 115, 87 S.Ct. at 1556; *Dallas County*, 421 U.S. at 479-80, 95 S.Ct. at 1707-1708. However, the Island County election scheme differs from the *Dusch* and *Dallas County* schemes in that it establishes a primary election system in which the districts are used for voting. It is this primary election system

and not the residency requirement, which causes unequal representation under the Island County scheme. The single-district primary system combines with the inequality of population among the districts to confer a disproportionate voting strength on the residents of district three.

No similar disproportionate voting strength occurs in an at-large election for a primary election, as is done in Proposition 1.

H. Substantive Due Process

The state and federal constitutions provide equal due process protection. *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 216 n. 2, 146 P.3d 571 (2006). As noted in *Amunrud*, a reviewing court applies strict scrutiny only if a fundamental right is at stake. *Id.* at 158 Wn.2d at 220. Otherwise, only rational basis review applies. *Id.*

Plaintiffs ask this Court to apply the substantive due process test mentioned in *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990). But, the legal framework of the land use cases simply “does not apply” in every case, and should not be applied in election cases. *See, e.g. Weden v. San Juan County*, 135 Wn.2d 676, 707, 958 P.2d 273 (1998) (stating *Presbytery* “does not apply” to county jetski regulations.)

“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Burdick v.*

Takushi, 504 U.S. 428, 433, 112 S.Ct. 2059 (1992). Not every election regulation is subject to strict scrutiny even if it imposes some burden on individual voters. *Burdick*, 504 U.S. at 433. Most election regulations are reviewed under a flexible balancing test that “must weigh ‘the character and magnitude of the asserted injury to the rights protected . . . ’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564 (1983)). Under this flexible standard, there is no need to demonstrate that the challenged law is “narrowly tailored” to achieve its purpose. *Dudum v. Arntz*, 640 F.3d at 1098, 1114 (9th Cir. 2011).

In a 2008 decision, the Eighth Circuit explained that state election procedure is examined under substantive due process grounds in limited circumstances such as where the right to vote or disenfranchisement of a discrete group of voters occurred or when the willful and illegal conduct of election officials results in fraudulently obtained or fundamentally unfair voting results. *Nolles v. State Committee for Reorganization of School Districts* 524 F.3d 892, 898-899 (8th Cir. 2008). The cases surveyed in *Nolles* show that Plaintiffs have not made a claim supported by facts or law.

1. No fundamental right is impaired; strict scrutiny does not apply.

Plaintiffs state that due process is implicated because Proposition 1 operates with “geographical idiosyncracies [which] limit[] the rights of certain voters (the county’s more conservative minority) as well as potential candidates for office.” Plaintiffs’ Brief, p. 24. No case is cited, and no explanation is made of how or why the rights of voters are limited or the way that access to the ballot is denied to any candidate. In fact, the statutes and the proposition have no effect on the right to vote. Every person enjoys the same quality and power of representation. Indeed, in the eyes of many, representation is enhanced under Proposition 1 (and the state statutes) because every voter is allowed to cast a ballot for three of three council members instead of only one of six council members.

Plaintiffs must show -- by reference to the statutes (if applicable) and Proposition 1 -- how a fundamental right is impaired, and this they have failed to do and cannot do because there is nothing in Proposition 1 that impairs or interferes with the right to vote or disenfranchises a discrete set of voters.

Proposition 1 and the state statutes do not impose a poll tax or restrict access to a polling place. Elections are held by mail, so there is no problem with ballot box access, disenfranchisement or any other

restriction on the right to vote. Plaintiffs contend that the “minority voters are subject to the whims of the majority” in such a way that the system is “unduly oppressive.” Plaintiffs do nothing more than repeat a criticism of a democracy that is cliché, but not unconstitutional. Every voter is treated the same. Every voter in a countywide election has the same right as every other voter.

2. Strict scrutiny analysis would be inconsistent with U.S. Supreme Court precedent authorizing residency districts in countywide voting.

“Voting regulations are rarely subjected to strict scrutiny.” *Dudum v. Arntz*, 64 F.3d at 1106. Strict scrutiny is not appropriate because the approach taken by the statutes and Proposition 1 is consistent with currently binding decisions of the United State Supreme Court that have upheld multimember districts with a residency requirement that are unequal in size, discussed above.

3. There is a rational basis for the election system.

Other claims are subject to a rational basis review. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, “The rational basis test is the most relaxed form of judicial scrutiny.” *Id.* at 223. Under the rational basis test, the court determines whether the challenged statute is rationally related to a legitimate state interest. *Id.* at 222. “In determining whether a rational basis exists, a court may assume the existence of any necessary state of

facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest.” *Id.*

The Findings of the Commission provided a rational explanation for Proposition 1. SK CP 789 and Appendix B. There is a strong and well-understood tradition in San Juan County that countywide elections best serve the interests and the diverse needs of the citizens and help to unify the County as a whole. This is a rational approach to the organization of government, and does not violate substantive due process.

I. “Free and Equal” Elections — Article I, Section 19.

Plaintiffs argue that “grossly disproportionate [residency] districts violate the “free and equal” elections of article I, section 19 of the Washington Constitution. This is simply another way to assert a cause of action for an alleged conflict with the “one-person, one-vote” principle of federal equal protection law.

Plaintiffs fail to mention that less than two years ago the Washington Supreme Court reminded us that, “Washington cases have never held that article I, section 19 requires substantial numerical equality between voting districts. Rather, we have historically interpreted article I, section 19 as prohibiting the complete denial of the right to vote to a group

of affected citizens.” *Eugster v. Washington*, 171 Wn.2d 839, 845, 259 P.3d 146 (2011) (citations omitted).

Plaintiffs do not cite to any provision of the county charter that denies the right to vote to any person or group of people. Each Plaintiff can join every other active voter in San Juan County to vote for each member of the county council. Each Plaintiff has equal voting power. Once elected, the council members represent every person in the county. All elections are free and equal. Every voter is represented equally. The right to vote is preserved for those who wish to exercise that right. The decision in *Eugster* is controlling law; accordingly, article I, section 19 does not apply.

Plaintiffs offer *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984) to provide some history on article I, section 19. But, Plaintiffs acknowledge the voting method in *Foster* gave a vote to property owners with ten acres or more and excluded others. Plaintiffs’ Brief p. 27. That fact makes *Foster* inapplicable.

J. “Privileges and Immunities” – Article I, Section 12.

Plaintiffs combine a number of arguments under the heading of article I, section 12; but avoid a discussion about the framework for analysis under this section. Most importantly, Plaintiffs do not identify

the fundamental right of citizenship that is at issue by the adoption of Proposition 1.

Article I, Section 12 states:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

In *Grant County Fire Protection District No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004), it was stressed that “not every statute authorizing a particular class to do or obtain something involves a ‘privilege’ subject to article I, section 12.” Rather, “ ‘privileges and immunities’ ‘pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship.’ ” *Id.* at 812. The first step in the analysis is a determination of whether the right at issue is fundamental. Plaintiffs have identified *no* fundamental right at issue.

Plaintiffs offer a “mathematical demonstration,” but that is not evidence of a fundamental right of citizenship. Mathematical theory and “chance” is insufficient evidence of invidious discrimination. *Whitcomb v. Chavis*, 403 U.S. 124, 145-146, 91 S.Ct. 1858 (1971).

Plaintiffs offer the results a primary election held in the winter of 2013, in which two council member positions had three candidates and one council member position had two candidates. But, a single election,

and whether one person chose to run for office (and require a primary) or not, is not an example of a fundamental right of citizenship. Similarly, events seemingly unique to San Juan County, such as seeing each other at the grocery store, living on islands separated by the Salish Sea or “information asymmetry” do not create a fundamental right of citizenship.

Plaintiffs ask this Court to interfere with the voter’s choice of election by creating equal size residency districts. But, the courts have never been used to equalize the “chance of winning” in any campaign. The courts will protect the right to vote and the right to be a candidate. But, the outcome depends on a long list of political factors that will cause people to vote for one candidate over another including name familiarity, preparedness, policy viewpoints, personal background, experience, advertisements, willingness to serve, likability, appearance, work ethic, campaign organization and other intangible factors.

No fundamental right of citizenship has been described as impaired; therefore article I, section 12 is not applicable. No one is denied the right to vote. No one is denied the right to be a candidate or the right to run campaign fairly and on equal ground with other candidates. The privileges and immunities clause of the Washington Constitution article 1, section 12 is not impaired.

IV. CONCLUSION

Based on the foregoing it is requested that the Court affirm the order on summary judgment entered by Judge John M. Meyer.

Respectfully submitted this 3rd day of July 2013.

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

By: 
Randall K. Gaylord WSBA #16080
Attorney for San Juan County

Appendix A

RECEIVED

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SAN JUAN
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**SAN JUAN COUNTY, WASHINGTON
HOME RULE CHARTER**

Basic Charter Adopted by the Voters on November 8, 2005

First Amendment Adopted by the Voters on November 8, 2005

**Proposition 1 Proposed by 2012
Charter Review Commission**

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Appendix A

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PREAMBLE

We, the citizens of San Juan County, in order to secure the benefits granted to a Home Rule Charter County under the laws of Washington State and to assert greater control over the actions of by the people County government, adopt this Charter.

ARTICLE 1 - POWERS OF THE COUNTY

Section 1.10 - General Powers

(1) The County shall have all the powers that a Charter County may have under the Constitutions and laws of the United States and the State of Washington.

(2) All ordinances, administrative rules and resolutions in operation at the time this Charter takes effect, to the extent they are not inconsistent with the provisions of this Charter, shall remain in force until amended or repealed. All rights, claims, obligations, proceedings and liabilities existing on the effective date of this Charter shall not be affected by the adoption of this Charter.

Section 1.20 - Intergovernmental Relations

The County may exercise any of its powers to perform any of its duties, functions, projects, or activities jointly or in cooperation with any one or more governments, governmental agencies, municipal corporations, or any private agency or corporation, in any manner permitted by law and participate in the financing thereof.

CR

Section 1.30 - Construction

(1) The power of the County shall be liberally construed; it is intended that this Charter confer the greatest power of local self-government on the people of San Juan County consistent with the State Constitution. Specific mention of a particular power or authority shall not be construed as a limitation on the general power of the County, but shall be considered as an addition to and supplementary to or explanatory of the powers conferred in general terms by this Charter.

(2) References to adoption of ordinances or resolutions by the Legislative Body as defined in Section 2.30 below shall not be construed as impairing the right of the voters to initiate or refer ordinances or resolutions.

Section 1.40 - Name, Boundaries, County Seat

The Corporate name of this County shall remain San Juan County, and it shall have those boundaries provided by the Legislative Body state law. The County seat shall be Friday Harbor, Washington. Branch offices of the County are authorized and branch offices hereafter established shall be by ordinance.

Section 1.50 - Separation of Powers

The powers delegated to County government by the people shall be separated into three branches:

- (a) The Executive Branch,
- (b) The Legislative Branch, and
- (c) The Judicial Branch.¹

Although powers are delegated to the three branches, the right and obligation to oversee the functions of government shall be retained by the Citizens of San Juan County.

ARTICLE 2 - THE LEGISLATIVE BRANCH

Section 2.10 Composition

The legislative Body shall consist of ~~six (6)~~ three (3) members ~~nominated and voted on by district who are qualified for office as provided by this Charter and state law and selected in accordance with the methods set forth in this Charter.~~

Section 2.11 - Name

The Legislative Body shall also be known as the County Council and its members known as County Council Members.

Section 2.20 - Elections

~~Each~~ members of the Legislative Body ~~are shall be qualified as provided in Section 4.20 of this Charter and~~ elected pursuant to Article 4 - Elections of this Charter.

Section 2.30 Powers

(1) The legislative powers of the County, as granted by the State Constitution and law and not reserved to the people shall be vested in the Legislative Body. The enumeration of particular legislative powers herein shall not be construed as limiting the legislative powers of the Legislative Body.

(2) The Legislative Body shall exercise its legislative power by adoption and enactment of ordinances or resolutions. It shall have the power to:

- (a) Levy taxes, appropriate revenue and adopt budgets for the County.
- (b) Establish the compensation (and benefits, if any) to be paid to all non-elected County officers and employees and to provide for the reimbursement of expenses.
- (c) Establish, abolish, combine and divide by ordinance, non-elective administrative offices and executive departments and to establish their powers and responsibilities unless otherwise limited by law or other provisions of this Charter.
- (d) Adopt by ordinance, comprehensive plans and development regulations including plans for present and future development and improvement of the county.
- (e) Approve contracts or establish by ordinance methods by which any type of contract shall be approved.

(3) The Legislative Body, ~~as a whole or by committee,~~ may conduct public hearings on matters of public concern.

¹ With the exception of the quasi-judicial functions of the Legislative Branch, the duties of the Judicial Branch are outside the purview of this Charter.

Section 2.31 - Limitations of Power and Relationship with Other Branches

(1) Except in the exercise of its legislative powers under this Charter, as defined in Section 2.30, the Legislative Body, its staff, and individual Legislative Body members shall not interfere in the administration of the Executive Branch. They shall not give orders to, or direct, either publicly or privately, any officer, or employee subject to the direction and supervision of the County Administrator, Executive Branch, or other elected officials.

(2) Interaction between the Legislative Body, its staff and individual Legislative Body Members, and officers and employees within the Executive Branch shall follow procedures developed by and agreed upon by the Legislative Body and the County Administrator.

Section 2.40 - Organization

(1) The Legislative Body shall annually elect one of its members as chair and another of its members as vice-chair who shall act in the absence of the chair.

(2) The Legislative Body shall be responsible for its own organization, the rules of conduct of its business and for the employment and supervision of persons it deems necessary to assist in the performance of its duties.

(3) A majority of the Legislative Body shall constitute a quorum at all meetings. Unless otherwise provided, action of the Legislative Body shall require the affirmative vote of ~~four~~ (4) two (2) members.

Section 2.41 - Rules of Procedure

The Legislative Body shall enact by ordinance rules of procedure governing the time, place and conduct of its meetings and hearings and the introduction, publication, consideration and adoption of ordinances; provided, that the Legislative Body shall meet in open session regularly at least twice monthly.

Section 2.50 - Ordinances

(1) Every legislative act shall be by ordinance except for matters that may be addressed by resolution as provided in Section 2.70 of this Charter. The subject of every ordinance shall be clearly stated in the title, and no ordinance shall contain more than one subject. Ordinances or summaries of them, the places where copies are filed, and the times when they are available for inspection, shall be published when the ordinances are proposed and again upon enactment.

(a) No ordinance shall be amended unless the new ordinance sets forth each amended section or subsection at full length.

(b) Ordinances may adopt, by reference, Washington State statutes, any recognized printed codes or compilations in entirety or in part.

(2) Every ordinance shall be introduced in its entirety in writing.

(3) Except as otherwise provided in this Charter, all ordinances shall take effect ten (10) working days after the date it is enacted or later if so stipulated in the ordinance.

Section 2.51 - Codification of Ordinances

All ordinances of the County, which are of a general and permanent nature or which

impose any fine, penalty, or forfeiture, shall be codified in a code, which shall be adopted by ordinance and shall be known as the San Juan County Code. The code shall be kept current to reflect newly adopted, amended or repealed ordinances. A current copy shall be placed in the public libraries in the County and in such other places as the Legislative Body deems appropriate.

Section 2.52 - Emergency Ordinances

(1) An ordinance necessary for the immediate preservation of the public peace, health, or safety or support of the County government and its existing institutions may be passed by action of the Legislative Body, which shall be effective immediately.

(2) An emergency ordinance shall be introduced and passed in the manner prescribed for emergency ordinances generally, except that the emergency and the facts creating it shall be stated in a separate section of the emergency ordinance.

Section 2.53 - Emergency Ordinances - Limitations

No emergency ordinance may levy taxes, grant, renew or extend a franchise, regulate the rate charged by any utility or authorize the borrowing of money for more than one hundred and twenty (120) days.

Section 2.60 - Confirmations

The Legislative Body shall confirm or reject appointments by the County Administrator within thirty (30) days of the date the name or names of are submitted to it. Failure of the Legislative Body to reject an appointment within thirty (30) days shall result in automatic confirmation of said appointment.

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Section 2.70 - Miscellaneous Appointments

The Legislative Branch by action shall appoint members of all boards and commissions except as otherwise provided in this Charter.

Section 2.80 - Resolutions

(1) The Legislative Body may pass a resolution to:

- (a) Organize and administer the Legislative branch.
- (b) Make declarations of policy that do not have the force of law.
- (c) Request information from any other agency of the County government.

(2) The Legislative Body in passing resolutions need not comply with the procedural requirements for the introduction, consideration and adoption of ordinances.

ARTICLE 3 - THE EXECUTIVE BRANCH

Section 3.10 - Composition

The Executive Branch shall be divided into Executive and Administrative Offices.

Section 3.20 - Executive Offices

(1) The Executive offices shall consist of the following elected officials: the County Assessor, County Auditor, County Clerk, County Treasurer, Prosecuting Attorney, and County

Sheriff.

(2) ~~These offices shall be re-created by this Charter and, unless amended by this Charter~~ Unless otherwise provided in this Charter, the County officials, shall have the same powers and duties as in the past powers, duties and obligations granted to each official by the State Constitution and statutes and any other applicable laws (unless amended by new State statutes whereupon the new statutes shall prevail). Such powers and duties shall be subject to: all ordinances passed by the Legislative Branch or initiatives passed by the voters; and to all personnel, budgeting, expenditure, and any other policies of general application recommended by the County Administrator and adopted by the Legislative Branch.

Section 3.30 - Administrative Offices

The Administrative offices shall consist of all appointed department heads.

Section 3.40 - County Administrator

The County Administrator shall be the chief administrative officer.

Section 3.41 - Selection and Termination Process

(1) The Legislative Body is vested with the responsibility for conducting a professional search to locate and hire a County Administrator qualified to carry out the duties of the office as detailed in Section 3.43 of this Charter.

(2) The County Administrator shall serve under an at-will employment contract. Termination of the County Administrator shall comply with the terms of such a contract.

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Section 3.42 - Compensation

The County Administrator shall receive compensation determined by the Legislative Body sufficient to attract a qualified professional.

Section 3.43 - Powers and Duties

(1) The County Administrator shall have all the executive powers of the County that are not expressly vested in other specific elected officers by this Charter. The County Administrator shall:

- (a) Manage all administrative offices and functions.
- (b) Ensure that all actions of the Executive Branch are compliant with all Federal, Washington State, San Juan County codes and procedures, and this Charter seeking advice from the County Prosecutor or other sources as necessary.
- (c) Ensure that all systems, procedures and use of technology of the departments under the County Administrator's jurisdiction be periodically reviewed and actions taken to insure that optimum practices are being employed.
- (d) Present to the Legislative Branch an annual statement of the governmental affairs of the County and any other report, which the Legislative Branch may deem necessary.

- (e) Prepare and present to the Legislative Branch, operating and capital budgets, accompanied by a budget message setting forth proposals for the county during the next fiscal year.
- (f) Assign duties to administrative offices and executive departments, which are not specifically assigned by this Charter or by ordinance.
- (g) Act as the signing authority, on behalf of the County, on all claims, deeds, contracts and other instruments initiated within the fiscal and budgetary procedures.

(2) The specific statement of particular executive powers shall not be construed as limiting the executive powers of the County Administrator.

Section 3.50 - Appointments by the County Administrator and Confirmation

The County Administrator shall appoint the head of each administrative department. All such appointments by the County Administrator shall be provisional until confirmed by action of the Legislative Body.

Section 3.51 - Qualifications

The heads of the administrative departments shall be appointed based on their abilities, qualifications, integrity and prior experience concerning the duties of the office to which they shall be appointed.

Section 3.52 - Appointments by Department Heads

The head of each administrative department shall appoint all managers and employees of the department complying with the rules of the personnel system when appointing managers and employees to positions covered by the personnel system. All managers that report directly to a department head shall be confirmed by the County Administrator.

Section 3.60 - Administrator Pro Tempore

(1) Between January 1 and February 28 of odd numbered years, the Legislative Body shall designate by action any qualified person, other than a sitting member of the Legislative Body, to serve as Administrator Pro Tempore.

(2) The Administrator Pro Tempore shall hold office at the pleasure of the Legislative Body, and in case of the absence, temporary disability, resignation or termination of the County Administrator, shall perform the duties of the County Administrator until the County Administrator returns or a replacement is hired.

(3) The Administrator Pro Tempore shall not have power to appoint or remove any department head. While the Administrator Pro Tempore is acting County Administrator, the Legislative Body can remove a department head and /or, in the case of a vacancy (caused by removal or resignation), to allow an interim, temporary appointment to be made by the Administrator Pro Tempore subject to confirming action of the Legislative Body.

Section 3.70 - Hearing Examiner System

(1) A hearing examiner system shall be established for consideration of land and shoreline issues.

(2) The qualifications, powers, and duties of, and procedures to be employed by the

hearing examiner, shall be established by the Legislative Body.

(3) The Legislative Body may, at its discretion, authorize the hearing examiner to conduct any other non-legislative hearing permitted or mandated by state or local law, including those permitted or mandated pursuant to this Charter, notwithstanding anything in this Charter to the contrary.

(4) Decisions of the hearing examiner are not subject to administrative review by the Legislative Body unless the Legislative Body, in consultation with the Prosecuting Attorney, has adopted, by ordinance, written procedures for the discretionary review of the decisions of the hearing examiner. The rules for discretionary review shall provide:

- (a) That an appellant may choose to bypass review by the Legislative Body and seek direct review with the court or other tribunal as provided by law;
- (b) The grounds under which the Legislative Body may choose to hear or not to hear an appeal; and
- (c) Such other matters as the Legislative Body deems pertinent to the appeal of decisions of the hearing examiner.

In no event will the act of bypassing administrative review before the Legislative Body be considered a failure to exhaust administrative remedies.

ARTICLE 4—ELECTIONS

Section 4.10 - Election Procedures

Except as provided in this ~~Article-Charter~~, nominating primaries and elections of the County Sheriff, County Treasurer, County Clerk, County Auditor and County Assessor shall be conducted in accordance with general law governing the election of non-partisan County officers. Except as provided in this ~~Article Charter~~, nominating primaries and elections of the Legislative Body shall be conducted in accordance with general law governing the election of non-partisan County officers. The election of the Prosecuting Attorney shall be as provided by state law.

Section 4.20 Qualifications; Residency for County Council Member

Each county officer holding an elective office shall be, at the time of appointment or filing a declaration of candidacy for election, at the time of election, and at all times while holding office, a citizen of the United States and a resident and registered voter of San Juan County. In addition, Legislative Body members must ~~be residents of the County and registered voters of the district from which they are nominated~~ reside in the district to which he or she seeks or holds office at the time of appointment or filing a declaration of candidacy for election, at the time of election and at all times while holding office. No Legislative residency district boundary change shall disqualify the Legislative Body member from holding office for the remainder of the term of office.

Section 4.30 - Legislative Body Residency Districts

(1) The ~~six (6)~~ three (3) Legislative Residency Districts shall be designated as Residency District 1, Residency District 2, and Residency District 3, District 4, District 5 and District 6.

- (a) The Each Residency Districts shall consist of nearly ~~equal~~

~~populations using the criteria of RCW 29A.76.010. To the extent practical, the districts shall consist of whole islands and nearly contiguous islands as authorized by RCW 36.32.020.~~

(b) The initial Legislative Residency districts are established to include whole islands and the existing precincts as follows:

~~District 1 San Juan South: San Juan 1, San Juan 5.~~

~~District 2 San Juan North: San Juan 2, San Juan 3, San Juan 4, Stewart.~~

~~District 3 Friday Harbor: Friday Harbor 1, Friday Harbor 2.~~

~~District 4 Orcas West: Orcas 1, Orcas 2, Waldron.~~

~~District 5 Orcas East: Orcas 3, Orcas 4.~~

~~District 6 Lopez/Shaw: Lopez 1, Lopez 2, Shaw, Blakely, Decatur.~~

Residency District 1 - San Juan: Stuart, Johns, Speiden, Sentinel, Pearl, Henry, O'Neal, Brown, Tum, Dinner, Goose and San Juan comprising precincts 11, 12, 13, 14, 15, 16, 17, 101, 102.

Residency District 2 - Orcas: Waldron, Patos, Sucia, Ewing, Matia, Puffin, Clark, Barnes, Doe, Orcas, Obstruction, Freeman, Jones, McConnell, Yellow, Cliff, Crane, Fawn, Bell, Double, Victim, Skull and Blakely comprising precincts 21, 22, 23, 24, 25 and 26.

Residency District 3 - Lopez/Shaw: Bund, Shaw, Canoe, Lopez, Decatur, Pointer, Armitage, Frost, James, Trump, Center, Ram, Deadman, Long, Charles, Boulder, Hall and Iceberg comprising precincts 31, 32, 33, 41.

~~(2) The lines of the districts shall not be changed more frequently than once in four years and only when all Legislative Body members are present. If any single island is included in more than one district, the districts on such island shall comprise, as nearly as possible, equal populations. (RCW 36.32.020)~~

Section 4.31 - Legislative Body - Terms

The terms of office of Legislative Body members shall be four (4) years or until their successors are elected, qualified and assume office in accordance with RCW 29A.20.040: PROVIDED, that the terms shall be staggered so that in one even numbered election year one members from ~~District 1, District 3, District 4~~ Residency District 3 shall be elected and the next even numbered election year one member from ~~District 2, District 5 and District 6~~ Residency District 1 and one member from Residency District 2 shall be elected.

Section 4.32 - Legislative Body - Nominations

Qualified voters of each ~~district~~ the County shall nominate candidates for the Legislative Body. Such candidates shall be nominated by countywide primary election for non-partisan office in the same manner as candidates for other County offices. (RCW 36.32.040)

Section 4.33 - Legislative Body - Elections

Legislative Body members shall be elected by the qualified voters of the district County in a countywide general election. The person receiving the highest number of votes for the position ~~in the district in which such member resides~~ shall be declared duly elected.

Section 4.34 - Legislative Body - Districting Committee

~~(1) Commencing with the 2010 census, within sixty days after each federal decennial census data is received from the State Redistricting Commission or its successor, a six (6) member Districting Committee, consisting of one (1) member from each Legislative District, shall be appointed by the Legislative Body. Members of the Districting Committee shall:~~

- ~~(a) Serve without salary but shall be compensated for reasonable out-of-pocket expenses;~~
- ~~(b) Meet within thirty days of its appointment to draw a redistricting plan for the county that shall be submitted to the Legislative Body for adoption following a public hearing.~~

~~(2) No later than eight months after receipt of the census data, the Legislative Body shall adopt a districting plan by ordinance.~~

The boundaries of Residency Districts may be altered by amendment to this Charter but such boundaries shall not be changed by the Legislative Body or initiative.

Section 4.40 - Oath of Office

An oath or affirmation to support the Constitutions of the United States and the State of Washington and the Charter and ordinances of San Juan County and to perform faithfully, impartially, and honestly the duties of office, shall be made by each elected officer before entering upon the duties of office. (RCW 36.16.040)

Section 4.50 - Official Bonds

A surety bond shall be required for all elected officers and such County employees as may be designated by ordinance. Bonds shall be in the form and amount required by ordinance and the cost borne by the County. See RCW 36.16.050 for schedule of bonds.

Section 4.60 - Vacancies in Office

- (1) An elective office shall become vacant when one of the following occurs:
 - (a) Death;
 - (b) Total permanent incapacity as determined by a panel of three physicians;
 - (c) Resignation;
 - (d) Recall of the officer;
 - (e) A Legislative Body member absent from three (3) consecutive regular meetings of the Legislative Body without reasonable cause
 - (f) Absence from the County for thirty (30) days without being excused by the Legislative Body; or
 - (g) Failure to maintain residence within the district from which elected.
- (2) Vacancies in a non-partisan elected office shall be filled at the next November General Election, unless the vacancy occurs after the day for filing declarations for candidacy, in

which case the vacancy shall be filled at the next succeeding November election. The person elected shall take office upon certification of the results of the election and shall serve the unexpired term of the vacated office. Until a successor has been elected and certified qualified, a majority of the Legislative Body shall fill the vacancy by appointment. All persons appointed to fill vacancies shall meet the qualifications set in Section 4.20 of this Charter.

(3) Vacancies in partisan elected offices shall be filled pursuant to RCW 42.12.040

Section 4.70 - Commencement of Terms of Office

~~The term of office of elected County officers shall commence on the second Monday of the next January immediately following the November general election.~~

Unless otherwise provided by this Charter the terms of office of elected county officials shall commence on the date specified by general law for public officers elected at general elections. (See RCW 29A.20.040)

ARTICLE 5 - THE PUBLIC INTEREST

Section 5.10 - Direct Government

The people of San Juan County reserve to themselves the power to make certain proposals, at their option, and to enact or reject them at the polls, independent of the Legislative Body in accordance with this Article.

Section 5.20 - Initiative

The people reserve to themselves the power of initiative. Any ordinance or amendment to an ordinance may be proposed by filing an initiative petition with the Auditor.

Section 5.21 - Initiative - Limitations

(1) No initiative shall contain more than one (1) issue.

(2) No initiative proposal requiring the expenditure of additional funds for an existing activity or of any funds for a new activity or purpose shall be filed unless provisions are specifically made therein for new or additional sources of revenue which may thereby be required.

(3) Redistricting of the Legislative Residency districts shall not be subject to the initiative process.

Section 5.22 - Initiative - Procedures

(1) Any legal voter or organization of legal voters of San Juan County may file an initiative proposal with the County Auditor, who within five (5) working days shall confer with the petitioner to review the proposal as to form and style. The County Auditor shall register the initiative by giving the proposed initiative a number, which shall thereafter be the identifying number for the measure.

(2) The County Auditor shall then transmit a copy of the proposal to the Prosecuting Attorney, who within ten (10) days after receipt thereof, in consultation with the petitioner shall formulate a concise statement, posed as a positive question, not to exceed seventy-five (75) words, which shall express and give a true and impartial statement of the purpose of the measure. Such concise statement will be the ballot title.

(3) The petitioner then has one-hundred-twenty (120) days to collect the signatures

of the registered voters in the County equal in number to at least fifteen (15) percent of the votes cast in the County in the last gubernatorial election. Each petition shall contain the full text of the proposed measure, ordinance or amendment to an ordinance and the ballot title.

(4) The County Auditor shall verify the sufficiency of the signatures on the petition and, if it is validated, submit the proposal to the people at the next general election that is at least one hundred and twenty (120) days after the registering of the petition.

(5) The Legislative Body may choose to enact the proposal without change or amendment. If the Legislative Body does not adopt the proposed measure and adopts a substitute measure concerning the same subject matter, the substitute proposal shall be placed on the same ballot with the initiative proposal.

(6) The voters shall be given the choice of accepting either or rejecting both. The voters shall then be given the choice of accepting one and rejecting the other. If a majority of those voting on the first issue is for accepting either, then the measure receiving the majority of the votes cast on the second issue shall be deemed approved. If a majority of those voting on the first issue is for rejecting both, then neither measure shall be approved regardless of the vote on the second issue.

Section 5.23 - Initiative - Amend or Repeal

No ordinance enacted by power of initiative shall be amended or repealed by the Legislative Body within two (2) years after enactment unless amended or repealed by a subsequent initiative or referendum.

Section 5.30 - Mini-Initiative

(1) Any ordinance or amendment to an existing ordinance may be proposed to the Legislative Body by registering with the County Auditor initiative petitions bearing the signatures of qualified voters equal in number to at least three (3) per cent of the number of votes cast in the County in the last gubernatorial election.

(2) Upon verifying the sufficiency of the signatures, the County Auditor shall transmit the initiative petition to the Legislative Body, which shall hold a public hearing on the proposed ordinance and enact or reject the ordinance within sixty (60) days.

Section 5.31- Mini-Initiative - Failed Initiative

If the proponents of an initiative fail to obtain the required number of signatures in the designated period, but have sufficient signatures to qualify the proposal as a mini-initiative, the proposal, at the request of the proponents, shall be treated as a mini-initiative.

Section 5.40 - Referendum

(1) The people reserve for themselves the power of referendum.

(2) The referendum may be ordered on any ordinance, or any part thereof passed by the Legislative Body except such ordinances as may be necessary for the immediate preservation of the public peace, health or safety.

(3) Upon signature validation of a referendum petition, the measure passed by the Legislative Body will be rendered ineffective pending the outcome of the referendum procedure. The signature validation of a referendum petition against one or more items, sections or parts of any ordinance will not delay the remainder of the measure from taking effect.

Section 5.41 - Referendum - Procedures

(1) Any legal voter or organization of legal voters of San Juan County may file a referendum proposal, against any enacted ordinance or portion thereof, with the County Auditor. The proposal shall be presented to the County Auditor within forty-five (45) days after the ordinance is passed by the Legislative Body.

(2) Within five (5) working days, the County Auditor shall confer with the petitioner to review the proposal as to form and style. The County Auditor shall register the referendum by giving the referendum a proposal number, which shall thereafter be the identifying number for the measure.

(3) The County Auditor shall then transmit a copy of the proposal to the County Prosecuting Attorney, who within ten (10) days after receipt thereof, shall formulate a concise statement, posed as a question, not to exceed seventy-five (75) words, which shall express and give a true and impartial statement of the measure being referred. Such concise statement will be the ballot title.

(4) The petitioner then has one hundred and twenty (120) days to collect the signatures of registered voters of the County equal in number to at least fifteen (15) percent of the number of votes cast in the County in the last gubernatorial election. Each petition shall contain the full text of the measure being referred and the ballot title.

(5) The County Auditor shall verify the sufficiency of the signatures on the petition and if validated, submit the measure to the people at the next general election that is at least one hundred and twenty (120) days after the registering of the petitions.

Section 5.50 - Numbering System

The County Auditor, when assigning numbers to initiatives, referendums and mini-initiatives, shall use a separate sequential series for each category. No number shall be reissued once used.

Section 5.60 - Recall

The people further reserve the power of recall as provided in the Constitution and the laws of the State of Washington.

Section 5.70 - Implementation by Ordinance

The Legislative Body shall enact ordinances to promote the carrying out of the provisions of this Article.

ARTICLE 6 - FINANCIAL ADMINISTRATION

Section 6.10 - Presentation and Adoption of Budgets

(1) At least seventy-five (75) days prior to the end of each fiscal year, the County Administrator shall present to the Legislative Body a complete budget and budget message, proposed current expense and capital budget appropriation resolutions, and proposed tax and revenue resolutions necessary to raise sufficient revenues to balance the budget.

(2) At least fifteen (15) days prior to the end of the fiscal year, the Legislative Body shall adopt appropriation, tax and revenue resolutions for the next fiscal year.

Section 6.20 - Budget Information

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At least one hundred thirty-five (135) days prior to the end of each fiscal year, all departments and agencies of County government shall submit to the County Administrator information necessary to prepare the budget, as requested by the County Administrator.

Section 6.30 - Contents of Budget

(1) The budget shall:

- (a) Include all funds, revenues and reserves; be divided into categories, projects, and objects of expense and include supporting data deemed advisable by the County Administrator or required by ordinance;
- (b) Indicate as to each category, project or object of expense, the actual expenditures of the preceding fiscal year, the estimated expenditures for the current fiscal year and requested appropriations for the next fiscal year;
- (c) Include proposed capital improvement programs for the next six (6) fiscal years.

(2) The expenditures included in the budget for the ensuing fiscal year shall not exceed the estimated revenues, surpluses and reserves.

Section 6.40 - Budget Message

The budget message shall explain the budget in fiscal terms and in terms of the goals to be accomplished and shall relate the requested appropriations to the comprehensive plans of the County.

Section 6.41 - Copies of the Budget

Copies of the budget and budget message shall be delivered to the County Auditor and each Legislative Body member. The budget message and supporting tables shall be furnished to any interested person upon request for a reasonable fee as established by ordinance and shall be available for public inspection from the time the budget message is delivered.

Section 6.50 - Budget Control

Within six (6) weeks following the end of each quarterly period during the fiscal year, and more often if required, the County Administrator shall submit to the Legislative Body, a written report showing the relation between the estimated income and expenses and actual income and expenses to date. If it shall appear that the income is less than anticipated, the Legislative Body may reduce appropriations, except amounts required to meet contractual obligations and for debt, interest and other fixed charges, to such a degree as may be necessary to keep expenditures within the cash income.

Section 6.60 - Consideration and Adoption of the Budget

(1) Prior to the adoption of any appropriation ordinances for the next fiscal year, the Legislative Body shall hold public hearings to consider the budget presented by the County Administrator and shall hold any other public hearings on the budget or any part thereof that it deems advisable

(2) The Legislative Body, in considering the appropriation ordinances by the County Administrator, may delete or add items, may reduce or increase the proposed appropriations and may add provisions restricting the expenditure of certain appropriations; but it shall not change

the form of the proposed appropriation ordinances submitted by the County Administrator.

(3) The appropriation ordinances adopted by the Legislative Body shall not exceed

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the estimated revenues of the County for the next fiscal year for each fund including surpluses and reserves.

(4) The Legislative Body may increase the amount of the estimated revenues contained in the budget presented by the County Administrator by re-estimating the amount by passing a motion to that effect or by creating additional sources of revenue which were not included in the proposed tax revenue ordinances presented by the County Administrator.

(5) Once the annual budget has been approved, the County Administrator shall need no further authorization to expend the funds appropriated.

Section 6.70 - Additional Appropriations

Additional funds may be appropriated by contingency or emergency appropriations.

Section 6.71 - Contingency Appropriations

The annual budget ordinance shall include contingency funds, which shall not be expended unless the County Administrator certifies in writing that sufficient funds are available and the Legislative Body adopts an additional appropriation ordinance after being requested to do so by the County Administrator.

Section 6.72 - Emergency Appropriations

The Legislative Body may adopt an emergency appropriation ordinance, which may appropriate contingency funds, revenues received in excess of the revenues estimated in the budget and funds from any other source available to the County in an emergency.

Section 6.73 - Additional Capital Budget Appropriations

The Legislative Body shall not adopt an additional or amended capital budget appropriation ordinance during the fiscal year unless requested to do so by the County Administrator.

ARTICLE 7 - PERSONNEL SYSTEM

Section 7.10 - Purpose

The Legislative Body shall, by ordinance, establish and maintain a personnel system for the County.

Section 7.20 - Exemptions

The provisions of this Article shall apply to all County positions except:

- (a) Independent Contractors.
- (b) All volunteer members of boards and commissions appointed by the Legislative Body or County Administrator.
- (c) All elected County officers.
- (d) Other ~~employees~~ persons as may become necessary as determined by the Legislative Body.

Section 7.30 - Administration

The County Administrator shall administer the personnel system of the County in accordance with the personnel rules adopted by the Legislative Body by ordinance.

Section 7.40 - Compensation

Compensation for County Elected Officials shall be commensurate with their duties and shall be set by a duly appointed Citizens' Salary Commission (RCW 36.17.024).

ARTICLE 8 - CHARTER REVIEW AND AMENDMENT

Section 8.10 - Charter Review Commission

As provided in this Article, this Charter shall be reviewed periodically by a Charter Review Commission (hereinafter referred to as the CRC).

Section 8.11 - Duties

The CRC shall review the Charter to determine its adequacy and suitability to the needs of the County and may propose amendments. The CRC may also make recommendations to the Legislative Body and publish its findings

Section 8.20 - Election Procedures and Period of Office

(1) ~~Five (5) years after adoption of this Charter and at least every ten (10) years thereafter~~ The Legislative Body shall cause an election of a CRC in 2020 and at least every ten (10) years thereafter provided that the CRC election is held in an even numbered year.

- (a) The CRC shall consist of fifteen to twenty-five (15-25) persons. The number of CRC members for each Legislative residency district shall be apportioned according to the population distribution in each Legislative Body residency district.
- (b) Candidates for the CRC must be residents of the county and registered voters of the district in which they run who and have been residents of registered voters in the County for at least five (5) years preceding their election.
- (c) There shall be no filing fee nor shall there be a primary. The qualified voters of the respective districts shall vote only for candidates from their district at the general election. Candidates' names shall appear on all ballots as drawn by lot.
- (d) The member of the CRC who receives the greatest number of votes shall convene the first CRC meeting.
- (e) The term of office shall be the shorter of one (1) year or when final recommendations are submitted to the Legislative Body for referral to the voters.
- (f) The CRC shall meet at such times and in such places as it deems appropriate upon having given public notice.

Section 8.21 - Vacancy

~~(1) If a CRC member is absent from three (3) consecutive meetings without prior notice being given to the Chair, a vacancy in that position may be declared by a two-thirds vote of the CRC.~~

~~(2) Any vacancy on the CRC shall be filled within fourteen (14) days of the declaration of a vacancy, by the next highest recipient of votes cast in the CRC election from the district where the vacancy occurs.~~

If any person elected to the CRC dies, resigns, or misses for consecutive regular meetings for any reason, that person shall have vacated his or her position, whereupon the CRC shall fill the position with the vote runner-up from the same district within fifteen days of that vacation, or the seat may be left vacant by a majority vote of the CRC.

Section 8.22 - Expenditures

(1) The Legislative Body shall provide to the CRC reasonable funds, facilities and services appropriate to an elected County agency. Provisions shall be made in the budget for the expenditures of the CRC during its scheduled term of office.

(2) Members of the CRC shall serve without salary, except that they shall be reimbursed for reasonable out-of-pocket expenses.

Section 8.30 - Charter Amendment - General Provisions

Charter amendments may be proposed by the CRC, the Legislative Body or by the public.

Section 8.31 - Charter Amendment - Procedures

(1) Any proposed Charter amendment shall be filed and registered with the County Auditor and submitted to the voters at the next November general election occurring at least ninety (90) days after registration of the proposed amendment with the County Auditor.

(2) In submitting any amendment of the Charter to the voters, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others. An amendment which embraces a single or inter-related subject may be submitted as a single proposition even though it is composed of changes to one or more Articles.

~~(3) If more than one amendment is submitted on the same ballot, they shall be submitted in such a manner that people may vote for or against the amendments separately; provided, an amendment which embraces a single or inter-related subject may be submitted as a single proposition even though it is composed of changes to one or more Articles.~~

~~(3)-(4)~~ If a proposed amendment is approved by a majority of the voters voting on the issues, it shall be effective ten (10) days after the results of the election are certified, unless a later date is specified in the petition or ordinance proposing the amendment.

~~(4)-(5)~~ Any implementing ordinance required by any Charter amendment shall be enacted by the Legislative Body within one hundred and eighty (180) days after the amendment is effective, unless the amendment provides otherwise.

Section 8.32 - Amendments by the Charter Review Commission

The CRC may propose amendments to the Charter by filing such proposed amendments with the Legislative Body who shall submit the amendments to the voters at the next November general election at least ninety (90) days after the filing and registration of the amendments.

Section 8.33 - Amendments by the Public

The public may propose amendments to the Charter by:

(a) Registering with the County Auditor an initiative petition bearing the signatures of registered voters of the County equal in number to at least fifteen (15) percent of the number of votes cast in the County in the last gubernatorial election.

(b) Signatures shall be registered not more than one hundred twenty (120) days

following filing of the petition with the County Auditor, who shall submit the amendments to the voters.

(i) The one hundred and twenty (120) day period shall begin upon receipt of official notification to petitioner(s) by the Prosecuting Attorney's Office either by certified mail or messenger.

(ii) If the last day for collecting signatures falls on a weekend or legal holiday, then the one hundred and twenty (120) day period shall extend to the end of the next business day.

Section 8.34 - Amendments by the Legislative Body

(1) The Legislative Body may propose amendments to the Charter by enacting an ordinance to submit a proposed amendment to the voters at the next November general election occurring at least ninety (90) days after enactment.

(2) The Legislative Body by unanimous vote of the entire Legislative Body may effect amendments to the language of the Charter where the passage of time has rendered language moot or obsolete. Such changes shall be made by ordinance, and have a public hearing.

Section 8.40 - Repeal of Charter

Any proposal to repeal this Charter shall include provisions for transition.

ARTICLE 9 - GENERAL PROVISIONS

Section 9.10 - Severability and Construction

The provisions of this Charter are severable. If any provision should be declared unconstitutional or inapplicable, it shall not affect the constitutionality or applicability of any other provision of this Charter.

Section 9.20 - Purchasing, Contracts, Claims, and Bonds

(1) The Legislative Body shall establish, by ordinance, procedures for purchasing supplies, services, materials and equipment, the awarding of contracts, the processing of claims, and the sale or refunding of bonds. The ordinance shall provide when bids shall be required and how invitations for bids shall be advertised.

(2) All purchases, contracts and bonds subject to bid procedures shall be advertised and, unless all bids are rejected, shall be awarded on the basis of sealed bidding to the lowest responsible bidder.

Section 9.30 - Franchises

All franchises granted by the Legislative Body shall be for fixed term not to exceed twenty-five (25) years, and no exclusive franchise shall be granted for the use of any street, road or public place.

Section 9.40 - Public Disclosure

Public disclosure of financial interest of elected public officials shall be governed by general law.

Section 9.50 - Information Management

The County Administrator shall establish procedures for maintaining a modern, efficient system for processing, maintaining and disposing of information and records; shall maintain a means to store and maintain, in retrievable manner, all County records which should not be destroyed and which are not necessary for the current operation of County government; and shall provide needed services for all branches of County government in a way that shall be deemed desirable for the efficient operation of the County government. These procedures shall be in compliance with general law and shall affect all departments of the County, elective or appointed.

ARTICLE 10 – TRANSITION 2012 AMENDMENTS

The provisions of this Article relate to the implementation of the Charter amendments adopted in 2012, and where inconsistent with the foregoing Articles of the Charter, the provisions of this Article shall constitute exceptions.

Section 10.10 – Continuation of Ordinances and Vested Rights

All ordinances, administrative rules and resolutions in operation at the time these Charter amendments take effect, to the extent that they are not inconsistent with the amendments, shall remain in force until amended or repealed. All rights, claims, obligations, proceedings and liabilities existing on the effective date of these amendments shall not be affected by adoption of the amendments. The 2012 amendments to the County Charter are not intended to affect the existing contract between the County and the County Administrator.

Section 10.20 - Existing Council Member Positions – Continuation and Termination

(1) The six existing County Council member positions (District 1, District 2, District 3, District 4, District 5, and District 6) shall continue in office and any vacancy in office filled under the terms of and pursuant to the Charter in effect on November 1, 2012, until the members of Council Residency District 1, Council Residency District 2 and Council Residence District 3 have been duly elected and qualified as provided in this Charter.

(2) The six existing Council member positions (District 1, District 2, District 3, District 4, District 5 and District 6) shall terminate without further action at midnight on the first Sunday following certification so as to coincide with the qualification of the persons to fill the positions of Council member positions of Council Residency District 1, Council Residency District 2, and Council Residency District 3.

Section 10.30 - Qualifications for County Council Positions for 2013 Special Election.

Candidates for the positions of Council Residency District 1, Council Residency District 2 and Council Residency District 3 shall be qualified as provided in this Charter, as amended in 2012.

Section 10.40 - 2013 Special Elections for County Council Residency District Positions

(1) A special election to fill the position of County Council members for Residency District 1, Residency District 2 and Residency District 3 shall occur at the special election to be held in April 2013. The County Auditor, as supervisor of elections, shall conduct the April 2013 special election and, if necessary, a special primary election in accordance with this Charter and

the general election laws of the state and without further action by the County Council. In the event the provisions of this Charter conflict with the general laws regarding elections, the provisions of this Charter and the intent of this Charter shall control.

(2) The period for filing declarations of candidacy for the April 2013 election for the positions of Council Residency District 1, Council Residency District 2 and Council Residency District 3 shall end on Friday December 14, 2012 at 4:30 pm.

(3) If more than two persons file declarations of candidacy for a Council Residency District a special primary election will be held in February 2013.

(4) The members of Council Residency District 1, Council Residency District 2, and Council Residency District 3 will be elected in the April 2013 special election.

Section 10.50 — Terms of Office for Council Members Elected in April 2013

(1) The term of office for the person elected in the April 2013 special election to the position of Council Residency District 1 and the person elected in the April 2013 special election to the position of Council Residency District 2 shall commence after having been qualified and beginning at 12:01 a.m. on the first Monday after certification and shall hold office for a term which expires at midnight on December 31, 2016. The first four-year term of office for Council Residency District 1 and Council Residency District 2 shall commence on January 1, 2017. An election for the full term for Council Residency District 1 and Council Residency District 2 shall occur in the usual course of the 2016 elections for county officials.

(2) The term of office for the person elected in the April 2013 special election to the position of Council Residency District 3 shall commence after having been qualified and beginning at 12:01 a.m. on the Monday after certification and shall hold office for a term which expires at midnight on December 31, 2014. The first four year term for Council Residency District 3 shall commence on January 1, 2015. An election for the full term for Council Residency District 3 shall occur in the usual course of the 2014 elections for county officials.

Section 10.51 Interim Council Member Salary

The salary for Council members for County Residency District 1, Council Residency District 2 and Council Residency District 3 shall be set at twice the current salary (as of April 1, 2012) per annum unless and until such time as the Citizens' Salary Commission sets a different full-time salary.

Section 10.60—Vacancies

Vacancies during the transition period shall be filled in the manner set forth in Section 4.60 as it existed before this Charter was amended in 2012.

Section 10.70—Amendment Effective Date

Except as provided in this Article 10, all amendments to the Charter shall be effective upon certification of the November 2012 election.

Section 10.80—Expiration

This Article 10 shall expire on January 1, 2017 and shall not appear in the publication of the Charter after that date.

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Appendix B

San Juan County Charter Review Commission Findings

June 5, 2012

CRC findings are derived from research by CRC members, presentations by former and present elected officials, comments received from the public, and the experience and judgment of CRC members. Divided votes (with the majority supporting the finding) indicate that some CRC members' interpretations and conclusions differed from those of the majority. Each of the findings listed below identifies problems with the existing Charter and states the Commission's recommendations for remedying those problems.

All evidence supporting the following findings, including documents and oral and written comments by elected and appointed officials, as well as members of the public, was presented and discussed at regular open public meetings of the Commission.

All documentary evidence is cited in the paragraphs to which they are pertinent. Oral and written presentations made to the CRC are referenced via CRC minutes, which are available by going to www.sanjuanco.com and clicking on "Charter Review Commission."

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Finding 1. Number of Council Members:

The Commission heard from former San Juan County Commissioners John Evans, Tom Cowan, Rhea Miller, Alan Lichter, Bob Myhr, Kevin Ranker, and Tom Starr specifically concerning this issue. All seven spoke in favor of returning to a council of three (see CRC minutes 1/7, 1/21, 3/3, 3/10, and 4/14; also audio recording for 1/21, Commission Documents). In addition, the Commission considered public materials, as cited below. Members of the public testifying at Commission meetings reported the opacity of public process resulting from committees of the present Council not being subject to the Open Public Meetings Act. County Administrator Pete Rose's testimony indicated that, among other things, administrative support of Council committees burdened the administrative budget with respect to both time and money (see CRC minutes 1/14/12). Accordingly, on the basis of the foregoing, and on the basis of open public Commission discussion held at its regular meetings, the Commission finds that:

1. A membership of six on the County's governing Council has resulted in greater expense than originally anticipated, in part because of the increasing expense of personnel benefits, but also because of greater overhead costs of office space, computer systems and staff support time (see <http://www.islandguardian.com/archives/00001028.html> and BOCC/COUNTY COUNCIL COSTS & ADMINISTRATION COSTS 2006 VS 2011, SJC Auditor's reports 1/14/12). Additionally, six members have required greater staff time providing information to the Council and their committees.

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Appendix B

2. A membership of six on the County's governing Council has resulted in the creation of closed committees of that body which has damaged public confidence in the transparency of County governance (see comments from Michael Peterson and Steve Ludwig, CRC minutes 1/28/12; from County Council member Lovel Pratt 2/25; and from web publisher Jack Cory 2/18). Due to the limits set forth in the Open Meetings Act, a meeting of any two members of a three-person Council constitutes an official meeting (see also item 10 below, regarding potential obstruction of Council actions). A legislative body of three results in all Council business being held in open meetings, providing for greater transparency to the citizens.

3. The Commission finds logically that the ability to make decisions in a group of three is more efficient than with six members. The Commission's view in this matter was strongly supported by former County Commissioners (e.g., written addendum from John Evans, CRC minutes 1/21 and comments by Alan Lichter, audio recording 1/21, Commission Documents; also see interview with Clallam County Commissioner Mike Doherty, and presentation by former Sheriff Bill Cummings, CRC minutes 2/25). In addition, the Commission heard testimony that the potential of deadlocked votes and extra time needed for decisions has been frustrating to the public and even to some sitting Council members. Academic research indicates that the optimum group size for decision-making is between two and five, and an odd-number is best because even-numbered groups take more time to make decisions (see www.intuitor.com/statistics/SmallGroups.html, www.sheilamargolis.com, www.wikiworld.com/collectiveintelligence).

4. The three-person council/commission system is widely used because of the simplicity of decision-making compared to any other number. Out of 39 counties in Washington State, 34 counties have three elected legislators. Only San Juan County has experimented with the even number of six legislators. A majority of counties in the United States have three elected legislators (see http://sanjuanco.com/CRC/docs/CRCDocs/WA_Counties_Population_Admin_Method_doc.docx.pdf); County Government Structure, A State-by-State Report, National Association of Counties, March 2009; and item 8 below.

5. The nature of six part-time Council members from six districts, being oriented and guided in their jobs by an Administrator, has led to a leadership accountability vacuum resulting in inefficiency in county government and confusion about the role of Council members. (See also Finding 2 relating to countywide elections and Finding 5 relating to substituting a subordinate manager for a separate administrative branch.)

6. Three full-time members on the County's governing council has the potential to reduce the overall costs of governance, and in any event will assure that the members of the County's governing body will be obligated to maintain the transparency of their governance, and reduce the burden imposed upon administrative levels of the County. (See also Finding 5 relating to separation of powers).

7. The Commission believes that fewer Legislative positions will encourage greater competition in races, resulting in fewer uncontested races and more choices for voters.

8. With a Council of six, San Juan County has a comparatively high ratio of elected Council members to total population. Among Washington's 39 counties, 34 have three-member commissions or councils. Almost all of these counties are considerably larger in population than San Juan County. For example, Spokane, Clark, Thurston, Kitsap, and Yakima counties, with populations ranging from 244,700 to 472,650, all have three-member boards. Of Washington's six charter counties, San Juan County is the smallest. The next largest, Clallam County, has four and one-half times the population of San Juan County but only three elected commissioners. The Commission finds unpersuasive the argument that San Juan County's governance requires six elected councilpersons when much larger counties are governed by boards of three.

9. There is a strong and well-understood tradition in Washington State, founded on the State Constitution (Article XI, Section 4) and practiced in San Juan County since its founding, that three elected legislators can represent the citizens and function in an efficient and just manner and bring the County together as a whole.

10. Under the current six-member Council system, three members can meet privately with staff and administrative personnel. This is because three members do not constitute a quorum of the Council. Nevertheless, the same three members, while not constituting a quorum, can block any action by the Council. This obstructive capacity is not possible with a three-member Council (see CRC minutes 2/25, Lovel Pratt). The Commission finds unpersuasive a justification for private meetings that allow wider latitude for expression by Council members than a public meeting would allow (see CRC minutes 2/3: Rich Peterson, 2/18: Patty Miller).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission (via a unanimous decision of members present, CRC minutes 1/14, affirmed by vote against rescission 14 opposed, 2 in support, 2 abstentions, CRC minutes 3/3, and affirmed by vote for all amendments to be sent for review by prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) recommends the following change be made to Article 2 of the Charter:

Section 2.10 - Composition

"The County Council shall consist of three (3) members . . ."

Finding 2. Countywide Elections:

The Commission heard testimony from the public specifically concerning this issue. Members of the public testifying at Commission meetings reported that they were better represented when they had the power to elect all county legislators. Based on public testimony and documentation, the Commission finds that:

1. The current six-member board, elected initially by district, has resulted in Council members being unresponsive to those living outside "their district," thereby impairing the Council's functions as a whole in responding to citizens' legitimate concerns (see comment by Cindy Carter, CRC minutes 2/11).
2. Countywide elections will provide countywide accountability as all legislators are responsible to all county electors, thereby making political accountability and accessibility congruent with the legislators' legal obligations (see, for example, written presentation by Lovel Pratt, CRC minutes 2/25 and Lisa Byers CRC minutes 3/3).
3. A membership of six on the County's governing body has institutionalized a "balkanization" of perceived interest among the communities comprising the County. Specifically, elected Council members have more responsibility just to their district constituents (those who vote for them) than to the rest of the county citizens from other districts.
4. The Commission finds that countywide voting is more consistent with the specific intent of the Charter, as stated in its preamble, "to assert greater control over the actions of County government," than is the structure set forth in the current Charter.
5. There is a strong and well-understood tradition in San Juan County since its founding days that countywide elections best serve the interests and the diverse needs of the citizens and help to unify the County as a whole. District elections have not been found to have improved this level of public service.
6. The Commission finds that a three-member legislative body elected countywide does not constitute an impediment to the healthy differentiation of communities and local cultures comprising the County's residents.
7. Although both propositions passed in 2005, the Commission finds it persuasive that the Basic Charter, which called for countywide voting for a Council of three, received more public support than did the Amended Charter, which called for voting by districts for a Council of six.
8. We are advised and therefore find that countywide elections meet all the statutory and Constitutional requirements for equal representation (see RCW 36.32.040 (2) and memorandum from San Juan County Prosecuting Attorney Randall Gaylord, April 19, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommends (via vote of 14 in favor, 1 opposed, CRC minutes 1/14, affirmed by vote to send amendments to prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) the following change be made to Article 2 of the Charter:

Section 2.10 - Composition

"The Legislative Body shall consist of ~~six (6)~~ three (3) members nominated and voted on by ~~district-~~ countywide."

Finding 3. County Council Residency Districts:

Although the Commission finds that, while countywide elections are preferable as assuring countywide concern and representation by each council member, one consequence, if uncured, could be election of all three council members from the island with the largest population. Accordingly, Council candidates are required to be nominated from separate residential districts, delineated in accordance with RCW 36.32.020 that accommodates the unique geographic nature of San Juan County and proved workable for over a hundred years prior to Charter adoption. The Prosecuting Attorney advises that under constitutional decisions to date, the disparity of population between districts does not result in an unconstitutional allocation of either voting power or representation, as voting is countywide and every voter, regardless of district, has equal influence on the outcome of elections (again, see RCW 36.32.040 and memorandum from San Juan County Prosecuting Attorney Randall Gaylord, April 19, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission (via a unanimous vote of all members present, CRC minutes 1/14, affirmed with slight modification via vote of 17 in favor, one opposed, CRC minutes 4/14) recommends the creation of three County Council Residency Districts, to include whole islands and existing precincts, by amending Article 5 [new numbering] of the Charter as follows:

Section 5.30 [new numbering], Legislative Body--County Council Residency Districts

"District 1 – San Juan: Stuart, Johns, Cactus, Flattop, Ripple, Speiden, Battleship, Barren, Pearl, Henry, O’Neal, Brown, Turn, Dinner, Goose and San Juan comprising precincts 11, 12, 13, 14, 15, 16, 17, 101 and 102;

District 2 – Orcas: Skipjack, Bare, Waldron, Patos, Sucia, Ewing, Matia, Puffin, Clark, Barnes, Doe, Orcas, Obstruction, Freeman, Jones, McConnell, Yellow, Low, Reef, Cliff, Crane, Fawn, Bell, Double, Victim, Skull, Jap and Blakely comprising precincts 21, 22, 23, 24, 25 and 36;

District 3 – Lopez/Shaw: Bund, Shaw, Canoe, Lopez, Decatur, Pointer, Armitage, Willow, Flower, Frost, James, Trump, Center, Ram, Deadman, Long, Charles, Boulder, Hall, Iceberg, and Colville comprising precincts 31, 32, and 41."

Finding 4. Full-Time Legislators:

The Commission heard testimony from members of the public and members of the Council and former County Commissioners testifying at Commission meetings regarding this issue. Accordingly, on the basis of the foregoing, and on the basis of discussion held at its regular meetings, the Commission finds that:

1. Legislative work on the County's governing council was, has been, and continues to warrant at least 40 hours per week, as attested by most Council members. As complex issues and controversial decisions continue, the Commission feels that the legitimate demands of Council work is truly full-time.
2. As the citizens expect members of the County's governing council to be the leaders of the County, leadership requires full-time attention and effort, a difficult challenge for a person otherwise employed (see comment by County Council member Howie Rosenfeld, CRC minutes 2/18).
3. Offering full-time positions with commensurate compensation will broaden the spectrum of motivated and informed citizens who can contribute their time and resources to local government in the Legislative/Administrative Role. The Commission considers it likely that countywide campaigns will require larger campaign organizations and expense. However, the Commission believes that the benefit of obtaining the best candidates from a wide range of backgrounds elected countywide would lead to better County governance.
4. Full-time Legislative positions will raise citizen expectations to full-time participation in County affairs and set a full-time standard for performance of Council members.
5. The Commission learned that frequent presence in Olympia is important in promoting and protecting the interests of the County (see letter from County Council member Lovel Pratt April 19, 2012), that such presence has diminished under the current system, and that when the County had full-time commissioners those interests were better served (see CRC minutes for presentation by former BOCC member Rhea Miller on March 10, 2012 and presentation by former BOCC member Kevin Ranker April on 14, 2012).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommends (via a 11 to 4 decision with 1 abstention, CRC minutes 1/21, affirmed by vote to send amendments to prosecutor 17 in favor, 1 opposed, CRC minutes 4/14) Article 2 of the Charter be amended as follows:

Section 2.10 - Composition "The Legislative Body shall consist of ~~six (6)~~ three (3) members nominated and voted on by district-countywide who shall serve full-time." [This is the cumulative result of three interrelated recommendations concerning Section 2.10.]

Finding 5. Substitution of Subordinate Administration for Separate Administrative Branch:

The present Charter vests the appointed Administrator with "all the executive powers of the County not vested in other specific elected officers." The current elected Council is restricted to making policy and passing ordinances. Presentations heard by the Commission were virtually unanimous that the division between legislative and administrative functions was not working, as legislators so often ignored it. This resulted in a merger of legislative and administrative function and an increased burden on the

Administrator, raising the possibility of there being in effect two independent administrative tracks operating simultaneously, with a consequent loss of transparency and accountability.

The Commission understands that the separate administration, partitioned by a separation of powers, was intended to resolve some problems that existed in the past (see presentation by Kevin Ranker, CRC minutes 4/14). The Commission regards this structure as an overreaction, and concludes that a simpler and more-flexible system can be put in place toward the same end.

Accordingly, on the basis of the foregoing and discussion held at its regular meeting on March 10, 2012, the Commission finds that:

1. Contrary to the long-held San Juan County tradition, consistent with accountability, that elected legislators respond to a wide variety of their constituents' needs, not solely legislate policy, the current charter discourages that tradition and form of accountability (see written addendum by Angie Ponder, CRC minutes 3/10), and Council members, in seeking to perform as expected, feel forced to violate the intentions of the existing charter. Consequently, the separation of powers created in the original Charter is ineffective and unenforceable.
2. The existing separation of legislative and administrative functions, while well-intentioned, is both counterproductive with respect to the traditionally expected role of the Council, and unnecessarily burden administrative personnel (see presentation by Pete Rose, CRC minutes 1/14).
3. It is necessary to establish, or at a minimum allow for, the necessary interplay between legislative and administrative roles in order to establish a system that is realistic and encourages the level of governmental service that the people of San Juan County have, over the years, come to expect (see written comment V. c. 1 and V.c.3 by Rich Peterson, addendum to CRC minutes 2/18, and presentation by former Commissioner and Council member Bob Myhr, CRC minutes 3/10).

Wherefore, pursuant to Section 8.32 of the Charter, the Commission recommended (via a 13 to 3 vote, CRC minutes 3/10) of members present) as follows:

Removal of all references to a separate executive branch from the Charter, return of the executive and administrative function to the elected County Council, thus empowering the Council to delegate any or all of its executive and administrative duties to subordinate officers appointed for that purpose or from among county employees if they so choose, without relinquishing any of their executive and administrative accountability.

[Notes: 1. The slight rewording of this motion, made pursuant to the Procedural Action motion of 2/18, does not alter the sense of the motion in any fashion. 2. The adoption of this recommendation is reflected in alterations in both Article 2 and Article 3 of the Charter—see amended Charter, as proposed. 3. An effect of this change is a clarification of the Auditor's role in assisting the Council in budget preparation. 4. This action has no effect upon Section 3.70 of the present Charter relating to the hearing examiner.]

Finding 6. Requirement for Employment of County Manager:

In returning administrative authority to the Council, the Commission recognizes that the Council needs to have professional assistance in carrying out its duties in these times of complex legal requirements for the administration of counties, particularly those operating under the Growth Management Act. The Commission found useful in their deliberations on this topic some features of Clallam County's charter (http://www.clallam.net/Board/assets/applets/2007_Charter.pdf; support for the Clallam model was expressed by Rich Peterson, CRC minutes, written addendum, 2/18) and the information and advice provided by Clallam County Commissioner Mike Doherty (see interview in CRC minutes 2/25). Current members of the County Council as well as members of the public advised the Commission of the need for an unelected professional County Manager or Administrator (see Richard Fralick, written addendum, CRC minutes 2/11, Patty Miller, CRC minutes 2/11), Alan Lichter, CRC minutes 1/21 and audio recording for 1/21, Commission Documents). Consequently the Commission makes the following findings:

1. The County Council should be required to employ a professional manager to assist in the administration of the County, under its direction.
2. With regard to the Charter Section 2.31 (1), "Limitations of Power and Relationship with Other Branches," limiting the legislators from directing staff, the Commission proposes to delete this language and replace it with the new policy language in Article 9, "Personnel." (See Finding No. 7, below.) This is consistent with increased administrative activity by the Council, but will protect employees from unwarranted or unethical interference from the Council.
3. Requiring the Council to hire a County Manager to whom they will delegate administrative functions and day-to-day operations as they see fit, will minimize stress and increase the effectiveness of county government. This should permit a match between the needs of the Council and the capacities of the County Manager.
4. The Council-Manager form of local government is the best system for San Juan County. It is commonly used and has proven successful in many counties and municipalities throughout the country. The Council-Manager form of government combines the strong political leadership of elected officials in a Council with the strong managerial experience of an appointed local government manager. This form establishes a representative system where all discretionary authority is concentrated in the elected Council and where that Council hires a professionally trained manager to oversee the delivery of public services. The Manager is directly accountable to the elected Council members, who delegate responsibilities to the Manager as they see fit. The Council is in turn directly accountable to the voters, thus making this system closer to the people. The Council-Manager form of government is a structure that will best carry out the teamwork necessary for effective county operations.

5. The Council-Manager form of local government creates sufficient separation of administrative and legislative functions necessary to increase efficiency and supplement the functions of appointed and elected department heads.

Wherefore, pursuant to Section 8.32 of the Charter (via a vote of 15 in favor and 2 opposed, CRC minutes 3/24, and affirmed by a vote of 17 in favor and 1 opposed to send amended Charter to prosecuting attorney, CRC minutes 4/14) the Commission recommends that Article 4 of the Charter [new numbering], Administrative Departments, be amended as follows:

Section 4.40—County Manager

The County Council shall appoint a County Manager, directly responsible to the Council, selected on the basis of his or her executive experience and professional administrative qualifications, to assist the County Council in carrying out the administrative responsibilities of the County [Note: language of original motion, pursuant to Procedural Actions motion of 2/18, was altered slightly by CRC Drafting Committee].

Finding 7. Interaction of Individual Council Members with Appointed Staff and Other Employees:

The Commission heard testimony from numerous parties concerning the difficulty Council members have had in meeting their constituents' expectations not only for accessibility, but also for results. However, the elimination of the "artificial separation of powers" between individual Council members and staff could expose staff to direct supervision by Council members. Such direct supervision in the past has on occasion placed inappropriate pressure upon department heads and staff, resulting in impairment rather than improvement of their performance. After discussion of this matter in three open public meetings, the Commission finds that, absent controlling language in the Charter, this pattern might return with a three-member Council with administrative powers.

Wherefore, in accordance with pursuant to Section 8.32 of the Charter the Commission recommends (via a unanimous vote of members present) that Article 2 of the Charter be amended to include the following:

Section 2.42 Interactions with County Employees

In all interactions with County employees, County Council members shall exhibit ethical and respectful behavior. No individual County Council member shall direct or discipline, or threaten to direct or discipline, any County employee, whether department head, supervisor, or volunteer, unless such direction or disciplinary action, or warning concerning such direction or disciplinary action, has first been duly approved by a majority of the County Council. Any directives or discipline by County Council members shall be made through the established chain of authority.

No disciplinary action by the County Council may be taken with respect to another elected official or an employee or volunteer hired by or reporting to another elected official.

Finding 8. Transition and Terms:

The Commission was extensively briefed by the Prosecuting Attorney concerning transition. Several alternatives were considered. The Commission recommends the most conservative transition plan to assure strict compliance with Article 11 Section 4 of the Washington State Constitution, requiring charter adoptions to be implemented within six months after they are approved by voters, in order to discourage, or, if brought, defeat litigation. This choice does, however, require two special elections, one in February 2013, and another in April 2013. The total probable cost of these elections, if not shared by other entities in the same elections, may vary from \$25,000 to as much as \$50,000. This sum is less than the potential cost of litigation, and having two special elections will assure legal certainty.

The Commission recommends that the new County Council comprise three new members (currently serving members may run). The Commission considered suggestions for retaining the three Council members elected in 2010 or 2012 as the new three-member County Council but concluded that to do so would effectively disenfranchise the voters of the county that did not have an opportunity to vote for those members. Consequently, the Commission decided that the remaining terms of the County Council members elected in 2010 and 2012 should end effective upon certification on the April 2013 election of the new County Council members who would be nominated and elected countywide.

Initial terms would be for nearly four years for Council members for Districts 1 and 2, and nearly two years for the Council member for District 3, and all Council members' terms thereafter would be for four years (see CRC minutes 3/24 for discussion and 3/31 for votes on the amended motion).

Effective dates have been chosen to implement the Charter amendments within six months of adoption.

Wherefore, pursuant to Section 8.31 of the Charter, the Commission voted (16 in favor, 3 opposed, 1 abstention, CRC minutes 3/31, confirmed 17 in favor, 1 opposed) as revised by prosecutor CRC minutes 4/14) recommend adoption of new Article 11.60 to the Charter, as follows:

Section 11.60 - Initial Terms of Office

(1) Council members elected in the transition election to the position of Residency District 1 and Residency District 2 shall hold office for a short term which expires at midnight on December 31st, 2016. The first full term for Council Residency District 1 and Council Residency District 2 shall commence on January 1st, 2017. An election for the full term for Council Residency District 1 and Council Residency District 2 shall occur in the usual course of the 2016 elections for county officials.

(2) The Council member elected in the transition election to the position of Residency District 3 shall hold office for a short term which expires at midnight on December 31st 2014. The first full term for Council Residence District 3 commences on January 1st, 2015. The election for the full term for the Council Residency District 3 shall occur in the usual course of the 2014 elections for county officials.

Topics Discussed with No Changes Recommended:

The Commission received suggestions and recommendations to revise other features of San Juan County's Home Rule Charter. After deliberations in several meetings, the Commission found a lack of compelling reasons to recommend further changes to the Charter. Therefore, the following features of the Charter, though discussed, are not proposed for changes:

Initiative and Referendum

Non-partisan elections

Elected rather than appointed Auditor, Treasurer, County Clerk, and Assessor

Appointed rather than elected County Administrator/Manager

Separate elected offices (not consolidated)

Citizens' Salary Commission

Hearing Examiner System

Q
X

Appendix C

Voting District for All County Officials



Appendix C



The map is based on the San Juan County Computer Assisted Map System (CAMS) data. It is not intended to be used as a substitute for a professional survey or other authoritative source. The map is provided for informational purposes only.

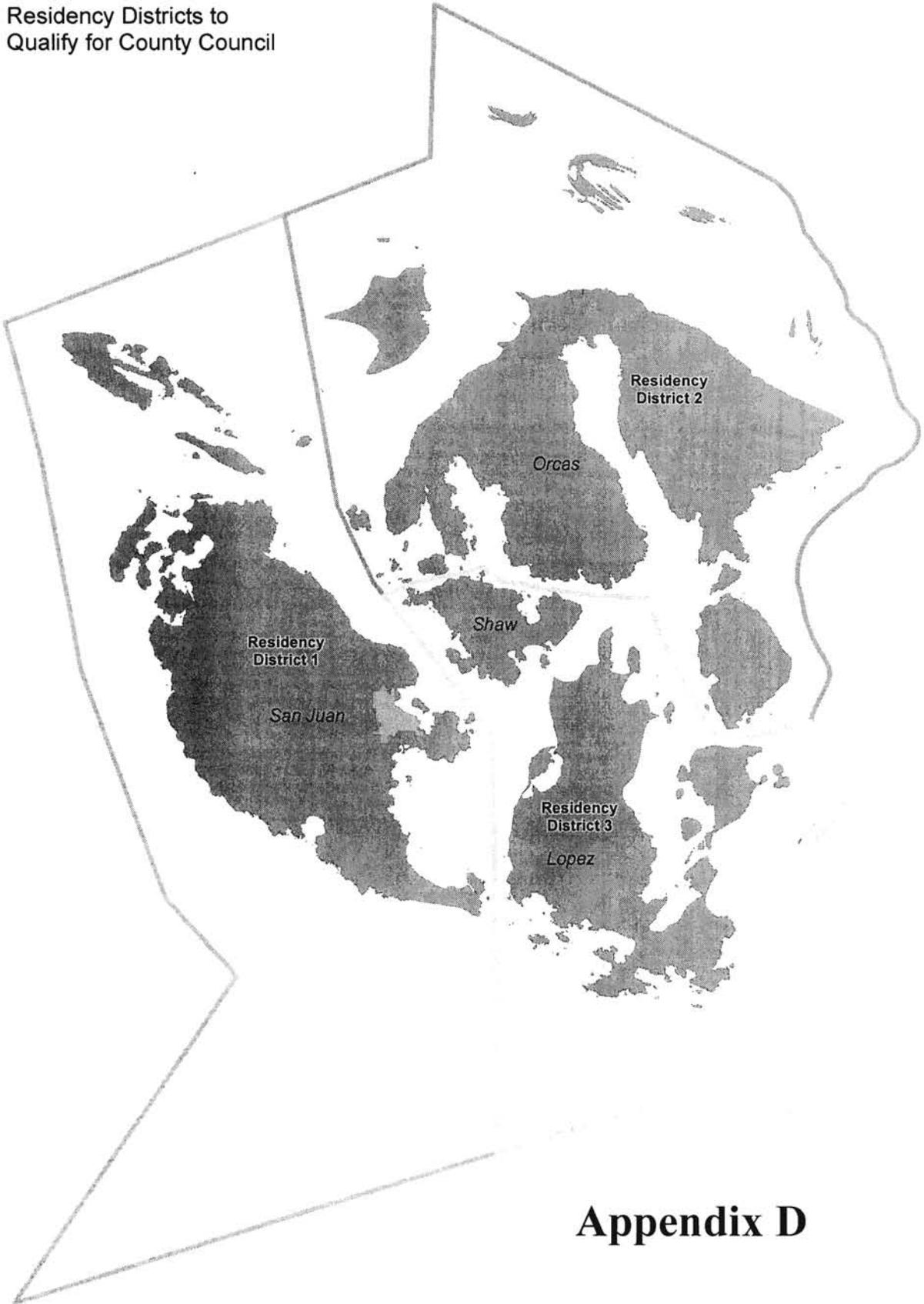


San Juan County



Appendix D

Residency Districts to Qualify for County Council



Appendix D



The map is intended for informational purposes only. It is not a legal document. The map is subject to change without notice.



San Juan County



Appendix E

COUNTY CLERKS OFFICE
FILED

MAR 20 2013

JOAN P. WHITE
SAN JUAN COUNTY, WASHINGTON

STATE OF WASHINGTON
SAN JUAN COUNTY SUPERIOR COURT

MICHAEL CARLSON, JERROLD R.
GONCE, & JEFFREY BOSSLER,
RICHARD PETERSON, MARC
FORLENZA, and GREG AYERS

Plaintiffs,

v.

SAN JUAN COUNTY, a political
subdivision of the State of Washington,
THE STATE OF WASHINGTON,
JAMIE STEPHENS, and LOVEL
PRATT,

Defendants,

And,

ELISABETH BYERS, ROBERT
JARMAN, BRIAN MCCLERREN,
PATTY MILLER and RICK HUGHES,

Necessary Parties.

NO. 13-2-05036-7

ORDER ON MOTIONS AND
GRANTING SUMMARY
JUDGMENT TO DEFENDANTS

THIS MATTER came on for hearing on February 19, 2013. Stephanie Johnson O'Day,
attorney at law, appeared on behalf of the Plaintiffs Michael Carlson, Jerold R. Gonce and
Jeffrey Bossler. Randall K. Gaylord, Prosecuting Attorney, appeared on behalf of Defendant
San Juan County, and Jeffrey T. Even, Deputy Solicitor General appeared on behalf of

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 1

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1 Defendant State of Washington. Also present were the following additional parties: Richard
2 Peterson, Mark Forlenza, Jamie Stephens, Lovel Pratt, Elisabeth Byers, Gregory Ayers, Patty
3 Miller, and Rick Hughes. Robert Jarman and Brian McClerren were not present and their written
4 response has been considered by the Court.

5 Before the Court were the following motions:

- 6 1. San Juan County's Motion to Dismiss for Lack of Subject Matter Jurisdiction
7 (Standing);
- 8 2. Plaintiffs' [First] Motion for Partial Summary Judgment;
- 9 3. San Juan County's Motion to Dismiss Seventh Cause of Action (Laches);
- 10 4. San Juan County's Motion for Partial Summary Judgment and/or Dismissal For
11 Failure to State a Claim as to Causes of Action Two Through Seven;
- 12 5. Plaintiffs' [Second] Motion for [Partial] Summary Judgment on Plaintiffs' First
13 Cause of Action;
- 14 6. San Juan County's Objections and Motions to Strike Portions of Ten Declarations
15 Offered by Plaintiffs; and
- 16 7. San Juan County's Objections and Motions to Strike—Second Set.
- 17 8. The status of parties added by the Plaintiffs in response to the Court's Order
18 Regarding Necessary Parties.
- 19
- 20
- 21

22 The Court has received papers from each of the additional parties except Elisabeth Byers,
23 who stated in court that she did not intend to submit any papers. The Court finds that the
24 additional parties have been served with process and each additional party has had an adequate
25 opportunity to submit a response to the Court and the Court has subject matter jurisdiction.

26 The Court recognizes that the following additional parties are aligned with and wish to be

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 2

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1 considered a Plaintiff in this action: Richard Peterson, Marc Forlenza and Greg Ayers. The
2 Court further recognizes that the following additional parties are aligned with and wish to be
3 considered as Defendant in this action: Lovel Pratt and Jamie Stephens. The following persons
4 expressed no preference for being aligned with Plaintiffs or Defendant and will therefore be
5 simply identified in the caption as additional parties: Elisabeth Byers, Rick Hughes, Bob
6 Jarman, Brian McClerren and Patty Miller. The interests of all additional parties have been
7 presented to the Court by the additional parties or by the attorney representing Plaintiffs Carlson,
8 Gonce and Bossler, or the attorneys representing the Defendants San Juan County or State of
9 Washington and there is no reason to delay in entry of final judgment in this matter.
10

11 The Court has considered each of the motions listed above, the memoranda in support
12 thereof, the arguments of counsel, and the following:

- 13 1. Complaint for Declaratory and Injunctive Relief;
- 14 2. Answer of Defendant State of Washington;
- 15 3. Answer of Defendant San Juan County;
- 16 4. Complaint for Declaratory and Injunctive Relief—Amended to Add Necessary
17 Parties;
- 18 5. Answer of Defendant State of Washington to Amended Complaint;
- 19 6. Declaration of Doris I. Schaller with Auditor Record;
- 20 7. Plaintiffs' Memorandum in Opposition to Defendant San Juan County's Initial
21 Motions (Jurisdiction, Standing, Joinder of Necessary Parties);
- 22 8. Plaintiffs' Response to San Juan County Cross Motions for Summary Judgment,
23 and/or Dismissal;
- 24 9. State of Washington's Response to Plaintiffs' First Motion for Partial Summary
25 Judgment;
- 26

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 3

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1 Judgment;

2 10. County's Memorandum in Opposition to Plaintiff Motion for Partial Summary
3 Judgment (5th and 7th Causes of Action) and Cross Motion for Summary Judgment;

4 11. Plaintiffs' Response to San Juan County Motion to Strike Portions of Declarations;

5 12. San Juan County's Reply re: Dismissal/Summary Judgment on Causes of Action Two
6 Through Seven;

7 13. San Juan County's Reply re: Dismiss for Lack of Standing;

8 14. San Juan County's Reply—Dismiss Seventh Cause of Action (Laches);

9 15. Declaration Regarding Public Disclosure Commission Web Site Reports;

10 16. County's Communication Regarding Preliminary Injunctive Relief;

11 17. Plaintiffs' Reply to County Memorandum in Opposition to Plaintiffs' Motion for
12 Partial Summary Judgment on 5th and 7th Causes of Action;

13 18. State of Washington's Response to Plaintiffs' Second Motion for Partial Summary
14 Judgment;

15 19. San Juan County's Opposition to Summary Judgment on First Cause of Action by
16 County and Cross Motion for Summary Judgment;

17 20. Plaintiffs' Reply to Defendant San Juan County and Defendant State of Washington's
18 Responses to Plaintiffs' Motion for Summary Judgment on First Cause of Action;

19 21. San Juan County's Status Report; and

20 22. The papers, records, and files of this Court for the above-captioned matter.

21
22
23
24 In addition to the foregoing, the Court has stricken in part, but considered as to the
25 remainder, the following declarations and other documents, noting the objections which have
26 been interposed by Defendant San Juan County. The Court strikes, in part, each of the

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 4

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1 following to the extent they set forth speculation, irrelevant testimony, hearsay, statements of
2 legislative intent, or opinion of lay witness not helpful to the Court. The Court has otherwise
3 considered them to the extent the witness would be allowed to personally testify to the stated
4 subject matter at trial:

- 5 1. Declaration of Michael Carlson;
- 6 2. Declaration of Jeffrey Bossler (first);
- 7 3. Declaration of Charles Bodenstab;
- 8 4. Declaration of Jerrold Gonce;
- 9 5. Declaration of Stephanie Johnson O'Day;
- 10 6. Declaration of Patty Miller;
- 11 7. Declaration of Bob Jarman;
- 12 8. Declaration of F. Milene Henley;
- 13 9. Declaration of Richard Fralick;
- 14 10. Declaration of Richard Peterson (first);
- 15 11. Declaration of Janice Peterson (first);
- 16 12. Declaration of Ed Sutton;
- 17 13. Declaration of Leonard Wood;
- 18 14. Declaration of Richard Peterson (second);
- 19 15. Declaration of Janice Peterson (second);
- 20 16. Declaration of Jeffrey Bossler (second);
- 21 17. Declaration of Frank Penwell;
- 22 18. Declaration of Jeffrey Bossler (third);
- 23 19. Declaration of Marc Forlenza;
- 24
- 25
- 26

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 5

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- 1 20. Declaration of Ed Kilduff;
- 2 23. Declaration of Lovel Pratt;
- 3 24. Letter from Patricia Miller to the Honorable John M. Meyer (Feb. 15, 2013)
- 4 25. Response of Necessary Party [Richard Petersen];
- 5 26. Letter from Charles Richard Hughes II to the Honorable John M. Meyer (Feb. 16,
- 6 2013);
- 7
- 8 27. Response to Amended Complaint by Jamie Stephens;
- 9 28. Response of Necessary Party [Marc Forlenza];
- 10 29. Response of Necessary Party [Brian McClerren];
- 11 30. Response of Necessary Party [Bob Jarman];
- 12 31. Closing Statement of Jamie Stephens, Named as Necessary Party;
- 13 32. Closing Statement of Richard Peterson dated February 22, 2013.
- 14 33. Closing Statement of Marc A. Forlenza dated February 22, 2013.
- 15 34. Letter from Gregory M. Ayers to the Honorable John M. Meyer (Feb. 24, 2013);

17 At the hearing, the Court also considered the oral statement of Mr. Jeffrey Bossler, which
18 the Court finds had the effect of curing any defect in the form of the declarations he had
19 previously submitted, and the oral statement of Mr. Greg Ayers.

20 The Court finds that the admissible portions of declarations, responses and statements
21 offered by Plaintiffs and the additional parties and the statements made in open court do not
22 create an issue of material fact.

24 NOW, THEREFORE, having considered the motions, additional motions made at the
25 hearing, objections, and the arguments of counsel and the papers and records herein, and being
26 fully advised, the Court has issued a written ruling dated February 26, 2013, which ruling is

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 6

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1 attached to this order and incorporated by this reference.

2 IT IS ORDERED:

- 3 1. The case caption henceforth shall be show the status of the parties as indicated on this
4 order.
- 5 2. Additional party Rick Hughes is dismissed, without costs.
- 6 3. Additional party Patty Miller is dismissed, without costs.
- 7 4. Summary judgment is granted in favor of the Defendants and denied to Plaintiffs on
8 each of Plaintiffs' causes of action as follows:
- 9
- 10 a. First Cause of Action (Substantive Due Process challenge to RCW 36.32.020
11 and 36.32.040): Summary judgment is granted in favor of Defendants San
12 Juan County and State of Washington.
- 13 b. Second Cause of Action (Equal Protection, under the 14th Amendment to the
14 U.S. Constitution challenge to Proposition 1): Summary judgment is granted
15 in favor of Defendant San Juan County.
- 16 c. Third Cause of Action (challenge to RCW 36.32.020 and 36.32.040 based
17 upon Wash. Const. art. I, § 19): Summary judgment is granted in favor of
18 Defendants San Juan County and State of Washington.
- 19 d. Fourth Cause of Action (challenge to Proposition 1 under Article I, Section 12
20 (Privileges and Immunities Clause) of the Washington State Constitution):
21 Summary judgment is granted in favor of Defendant San Juan County.
- 22 e. Fifth Cause of Action (single subject challenge to Propositions 1, 2, and 3):
23 Summary judgment is granted in favor of Defendants San Juan County and State
24 of Washington.
25
26

ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 7

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1 X Sixth Cause of Action (challenge to Proposition 1 based on RCW 36.32.030):

2 Summary judgment is granted in favor of Defendant San Juan County.

3 g. Seventh Cause of Action (challenge to Propositions 1 and 2 based on Section 8.31

4 of San Juan County Charter): Summary judgment is granted in favor of

5 Defendant San Juan County.

6 5. Based upon the foregoing conclusions, and pursuant to RCW 7.24.010 et seq., the

7 Court makes the following declarations:

8 a. RCW 36.32.020 and 36.32.040 are valid and constitutional, and do not
9 violate substantive due process or equal protection under the state or federal
10 constitutions;

11 b. San Juan County Proposition 1 (2012) is constitutional under the state and
12 federal constitutions and valid under the provisions of state law and the San
13 Juan County Charter.

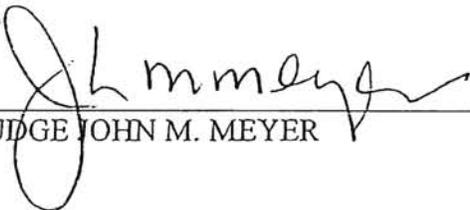
14 c. San Juan County Proposition 2 (2012) is constitutional under the state and
15 federal constitutions and valid under the provisions of state law and the San
16 Juan County Charter.

17 d. San Juan County Proposition 3 (2012) is constitutional under the state and
18 federal constitutions and valid under the provisions of state law and the San
19 Juan County Charter.

20 6. Based upon the foregoing conclusions, the Court denies the Plaintiffs' request to
21 enjoin the election for the positions of County Council, which election will be held in
22 the April 2013 Special Election pursuant to the transition provisions of Proposition 1.
23
24
25
26

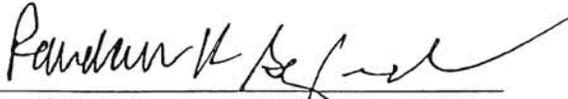
- 1 7. Defendant San Juan County's Motion to dismiss Plaintiffs Carlson, Gonce and
2 Bossler for lack of standing is denied.
- 3 8. Defendant San Juan County's Motion to dismiss the Seventh Cause of Action due to
4 unreasonable delay (laches) is denied.
- 5 9. Statutory attorney fees and costs are awarded in favor of each Defendant San Juan
6 County and State of Washington only, and against the Plaintiffs Carlson, Gonce and
7 Bossler only.
- 8
- 9 10. This is a final order for purposes of appeal.

10 DATED this 19 day of March, 2013

11
12 
13 JUDGE JOHN M. MEYER

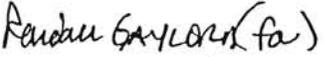
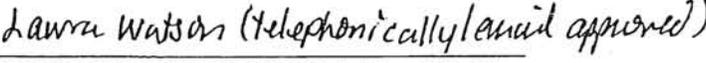
14 Presented by:

15 RANDALL K. GAYLORD
16 SAN JUAN COUNTY PROSECUTOR

17 
18 Randall K. Gaylord, WSBA No. 16080
19 Attorney for San Juan County

20 Approved for Entry:

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ORDER ON MOTIONS AND GRANTING SUMMARY
JUDGMENT TO DEFENDANTS - 9

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ELISABETH BYERS

ROBERT JARMAN

GREGORY AYERS

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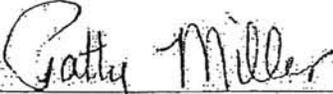
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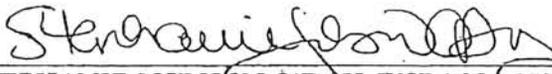
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Skagit County Superior Court

COUNTY CLERKS OFFICE
FOOD

FEB 27 2013

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February 26, 2013

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Re: Michael Carlson et al. v San Juan County et al., San Juan # 13-2-05036-7

Dear Counsel and Remaining Necessary Parties:

This matter came on for hearing on February 19, 2013, on various motions and cross-motions. I have reviewed the pleadings and submittals of all parties, heard argument, and evaluated various position statements. I also considered documents filed by the following before yesterday's close of business deadline: Jamie Stephens, Greg Ayers, Rich Peterson, and Marc Forlenza. My rulings on the issues before me are within the body of this opinion. I believe that every issue can be decided as a matter of law, so there will be no need for further evidentiary hearings. I have attempted to express my theories and reasoning as succinctly as possible; you will note the absence of case law citations. I have chosen to proceed in this manner largely because the legal support for my findings have been duly presented in the record and are well known to counsel. I assume that the prevailing – or perhaps all – parties will present Findings of Fact and Conclusions of Law and Judgment sufficient to cover all issues raised for appellate scrutiny. The parties should also feel free to propose any additional findings implicit or reasonably inferable from the terms of my ruling.

I have been asked to assess the legality and propriety of a political process created for and voted on by the duly-constituted electorate of San Juan County. I heard argument which highlighted great traditions of democracy from the Magna Carta to the Mayflower to Federal and State Constitutions to present day forms of local government. I received detailed explanations of how Propositions 1, 2, and 3 came into being. I heard descriptions of the bias or motives of the participants; how the goals of the original Freeholders were thwarted by the Charter Review Commission (CRC); how a small but strategically situated minority in the County overrode the will of the people; and, finally, how the electorate was confused and misled into supporting an alternative form of government which will lead San Juan County to disaster. The heart of this debate is whether or not San Juan County should be governed by a council

of six or three; that is not an issue for me to decide. I can only determine whether the process that brought us here is acceptable under the law.

What is before me in this case is similar to accusations and cross-accusations common to electoral politics found in America since the 18th Century. Our fellow countrymen fervently disagree on how and to what extent they should be governed by people whose job it is to bring some sort of order and efficacy to our society. The work of the CRC in 2012 had been anticipated by the original Home Charter. Attributed to German Chancellor Otto von Bismarck was the statement: "To retain respect for sausages and laws, one should not watch them in the making." Such was not the case with the CRC. Their deliberations were carried out in an open and extremely transparent manner, with all sorts of opportunities for input from the entire citizenry. See Auditor's Record (AR) pages 172-186.

The three propositions born of this process went from the CRC to the County Council with 17 in favor, 1 opposed, 1 abstention, and two partially opposed and partially in favor. See AR pages 249-251. The County Council unanimously agreed to put all the questions before the voters. See AR 167. The battle was joined. The voters, at a general election, approved the propositions. This is how it goes in a democratic society. Most interesting to me, though perhaps not particularly relevant, is that Proposition 1, 2, and 3 essentially implement the same system of government that existed before the original Home Charter was put into effect in 2005.

Motion to Dismiss for Lack of Standing/Justiciability: The County invites me to go through a person-by-person analysis on every cause of action, after which I will determine that no one has standing on any issue. I disagree. The issues raised by the Plaintiffs are matters of great public importance to the people of San Juan County and are ready to be heard at this time. On all causes of action, among the Plaintiffs and the remaining Necessary Parties, at least one person had a dog in the fight. Under the Uniform Declaratory Judgment Act, I am able to make a determination on all questions. Motion denied.

Motion to Dismiss COA 7 for Laches: Although inconvenient and perhaps expensive and somewhat prejudicial by its very nature, a six-month delay from the time of the CRC's findings to bringing the lawsuit is not unreasonable under the circumstances. The election was held November 6, 2012. This lawsuit would likely not have been brought had the Propositions failed. Funding, procuring an attorney, researching the legal issues, and the myriad requirements that go into making a valid case all favor some delay. Motion denied.

COA's 5 (Art. 2, Sec. 19) and 7 (SJCC 8.31): Plaintiffs maintain that the Propositions (essentially 1 and 2) violate the "one subject rule" for ballot measures. As to the state question, I find that the Washington State Constitution applies only to the State Legislative process and not to local measures. As to the County, I find that 8.31 merely refers to, and does not incorporate, Art. 2, Sec. 19; further, nothing in the SJCC requires the implementation of the "one subject rule." In any event, even if it were applicable, I find that only one subject was addressed in each of the three propositions; to the extent that Plaintiffs argue otherwise, I respectfully disagree. All consist of the introduction, concise statement, and question called for under law, nothing more or less. Finally, I find no substantial evidence in the record that the ballot titles were confusing and misleading to the average, inquiring San Juan County voter. See AR 334-363 (Voter Pamphlet) and 364-365 (Official Ballot). The record reflects an unusually high amount of information, discussion, and participation in the process leading up to the November 2012 election. I

have great faith in the ability of the citizens of San Juan County to make informed decisions. Motion for Summary Judgment granted in favor of the Defendants.

COA 1 (Substantive Due Process): Plaintiffs ask that I find that R.C.W.'s 36.32.020 and .040 fail to serve a legitimate public purpose, should be strictly scrutinized, and serve no compelling State interest. In all cases where the Constitutionality of a law is questioned, the burden is on the questioning party to prove unconstitutionality beyond a reasonable doubt. Laws are presumed to be Constitutional at the outset. While I have some sympathy for the Plaintiffs' position, it is unnecessary for me to go through the various Constitutional tests and analyses, because I believe the Defendants' position on this issue can be sustained. San Juan County has a Home Rule Charter, so the statutes thought to be applicable are irrelevant. The State really has nothing to say about how San Juan County created its Charter. Also, residency districts, as opposed to voting districts, may be unequal in population and size. That is precisely what we have in San Juan County. If anyone doubts that theory, take a look at the discrepancies in Congressional Districts around the country. Defendants' Motion for Summary Judgment is granted.

COA 2 (Equal Protection): This cause of action implicates Equal Protection under the 14th Amendment to the U.S. Constitution. Here, the Plaintiffs have failed to show that a suspect class or fundamental right has been infringed. As noted before, residency districts can and do have unequal populations; this is allowable so long as the voting district encompasses the entire county. Not one of the propositions put before the voters has an impact on the fundamental right to vote. Defendants' Motion for Summary Judgment is granted.

COA 3 (Article 1, Sec. 19): The Proposition 1 approved by the voters may or may not, depending on to whom you listen, dilute voting rights. However, Art. 1, Sec. 19 only refers to the complete denial of the right to vote, which has not been shown to have occurred at any point in the record. Defendants' Motion for Summary Judgment is granted.

COA 4 (State Equal Protection): Plaintiffs suggest that Art. 1, Sec. 12 deserves the same analysis as the Federal Equal Protection Clause under COA 2. I agree. I do appreciate the hard work put in by proponents of this position to attempt to edify the Court why this may be the case. Unfortunately, whether or not a random Lopez Islander may have a better chance to get elected than a resident of other islands is irrelevant constitutionally. Under the Proposition 1 scheme, no one is denied the right to be either a candidate or to cast a vote. I expect the same would be true if, hypothetically, the CRC had chosen to separate Shaw and Lopez Islands into separate council districts, each with its own representative, for a total of four council districts in the county. Defendants' Motion for Summary Judgment is granted.

COA 6 (Staggered Terms): As a Charter County, San Juan may deviate from customary election requirements. I agree that the County has broad authority to change its Charter with respect to the scheduling of local elections. In order to make the new system work, it is necessary at the outset to start the new office holders at the same time. In the future the terms will become staggered. Regardless of what public policy may or may not be with regard to staggered terms, there is only one way to commence a new system. The numbers of general, primary, and special elections to be held in San Juan County are an unfortunate but necessary by-product of the changes required by the passage of Propositions 1-3. Defendants' Motion for Summary Judgment is granted.

February 26, 2013

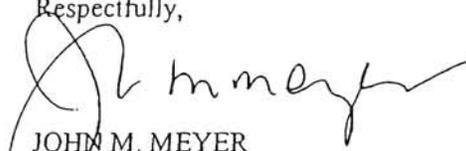
O'Day, Gaylord, Even, and Watson, Esq.'s

Page 4

I believe that covers all of the issues on which I have been asked to rule. Plaintiffs' request for an injunction halting the April election is denied. Although it has not formally been brought before me, I in no manner of thinking believe that this was a frivolous lawsuit. The Plaintiffs raised good and debatable issues that deserved the review of an impartial tribunal. Further, it became quite clear to me that a number of people participated for more than merely not liking the political result, but to question the process. That was most impressive to me, as it represents an extraordinarily high level of interest and commitment to good government amongst the residents of San Juan County.

A lawsuit such as this is truly a part of a great American tradition: respectful dissent and honorable opposition. I believe that Ms. O'Day's opening remarks and posture throughout this case - while not forgetting the excellent work by Messrs. Gaylord and Even - aptly showed why, in this magnificent Democracy of ours, citizens can petition for redress of their grievances and receive a full and fair hearing. Thank you for the privilege of presiding over this case.

Respectfully,



JOHN M. MEYER
Visiting Judge

Cc: Remaining Necessary Parties

Appendix F

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL CARLSON, JERROLD R.
GONCE, & JEFFREY BOSSLER,
RICHARD PETERSON, MARC
FORLENZA and GREG AYERS,

Appellants,

v.

SAN JUAN COUNTY, a political
subdivision of the State of Washington,
THE STATE OF WASHINGTON,
JAMIE STEPHENS and LOVEL PRATT
and ELISABETH BYERS, ROBERT
JARMAN, BRIAN McCLEERREN,
PATTY MILLER and RICK HUGHES,

Respondents.

NO. 88574-5

RULING DENYING MOTION FOR
PRELIMINARY INJUNCTION AND
MOTION FOR ACCELERATED
REVIEW

FILED
APR 02 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

Pursuant to changes in the San Juan County home rule charter adopted by voters in the November 2012 election, the county council will be reduced from six to three members, each to qualify for office by residing in a separate island district but nominated and elected countywide. (The districts are San Juan Island, Orcas Island, and Lopez/Shaw Islands.) The "top two" countywide primary election was held in February, and the general election is scheduled for April 23, 2013. Appellants Michael Carlson, Jerrold Gonce, Jeffrey Bossler, Richard Peterson, Marc Forlenza, and Greg Ayers challenged these charter amendments in Skagit County Superior Court, arguing, among other things, that Proposition 1 (the principal focus of their challenge) violates the constitutional one person – one vote principle because it says that the three council members must reside in separate island districts that are far from

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equal in population,¹ and that the title to Proposition 1 violates the single subject rule of article II, section 19 of the Washington Constitution. The superior court rejected these arguments and granted summary judgment of dismissal to the county, the State, and the individual defendants.

Appellants have now appealed to this court, seeking accelerated review so that the appeal can be decided before the April 23 election. In the alternative, they seek an injunction to prohibit the election from taking place on April 23, 2013.² Now before me are whether to issue an injunction and whether to accelerate review so that the case can be decided before the April 23 election.

Unless prohibited by statute, an appellate court has authority to issue orders before or after acceptance of review to insure effective and equitable review, including authority to grant injunctive or other relief to a party. RAP 8.3. The court will ordinarily condition the order on furnishing of a bond or other security. *Id.*³ In order to qualify for injunctive relief, the party must demonstrate that the review presents a debatable issue and that an injunction is necessary to preserve the fruit of a successful appeal. *Shamley v. City of Olympia*, 47 Wn.2d 124, 286 P.2d 702 (1955).⁴ Whether an injunction is necessary depends on the equities of the situation. *Purser v.*

¹ Appellants say they also challenge the constitutionality of RCW 36.32.020 and .040, but they do not explain how those statutes apply, given that San Juan County is a charter county.

² In a reply filed today, appellants suggest for the first time that the appeal should be decided before the election is certified on May 6, and in the alternative that the court could let the election proceed but order that the ballots not be counted until the appeal is decided. But these suggestions come too late, and would not alter my decision in any event.

³ Appellants suggest that the court should forego a bond “in light of the public import” of the case, but provide no argument or authority supporting this suggestion.

⁴ Under the general test trial courts employ for granting an injunction, one who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him. *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982).

Rahm, 109 Wn.2d 159, 177, 702 P.2d 1196 (1985) (construing RAP 8.1(b)(3), which governs delayed enforcement of trial court decisions but is instructive by analogy).

Based on the pleadings filed to date, appellants have failed to demonstrate a debatable issue on the validity of these charter amendments. As the State points out in its responses, the United States Supreme Court has determined in at least three cases that unequal-sized residency districts for elected officials do not violate the constitution if the election is citywide or countywide. See *Fortson v. Dorsey*, 379 U.S. 433, 434-36, 85 S. Ct. 498, 13 L. Ed. 2d 401 (1965); *Dusch v. Davis*, 387 U.S. 112, 113-14, 87 S. Ct. 1554, 18 L. Ed. 2d 656 (1967); *Dallas County v. Reese*, 421 U.S. 477, 95 S. Ct. 1706, 44 L. Ed. 2d 312 (1975). The reason behind these decisions is simple: at-large elections provide “mathematical perfection.” *Davis v. Garrison*, 553 F.2d 923, 926 (5th Cir. 1977). And while this court held unconstitutional Island County’s plan to elect county commissioners from unequal sized island-based districts, that was because the primary elections for choosing the nominees were limited to district voters. *Story v. Anderson*, 93 Wn.2d 546, 551, 611 P.2d 764 (1980). In invalidating the nomination system, the court noted that the general countywide election would not independently pose a problem. *Id.* Appellants cite no contrary authority, nor do they argue that the outcome should be different under the state constitution.⁵ As for the single subject rule of article II, section 19, the County points out that this court, in deciding the validity of a city ordinance, held that article II,

⁵ Appellants urge in a reply filed today that the Washington Constitution provides more protection in this area than its federal counterpart; for support they cite a decision holding that article I, section 19 of the Washington Constitution (conferring upon citizens the right to “free and equal” elections) invalidated a statute providing that irrigation districts could limit voting on their boards of directors to holders of agricultural land (as opposed to residential or business land). See *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984). Again, this argument comes too late. And in any event, *Foster* does not hold or even suggest that the one person – one vote rule is violated by a county scheme that qualifies candidates by district but requires that they be both nominated and elected in countywide elections. By their nature at-large elections count all votes equally.

section 19 only applies to state legislation. *City of Seattle v. Buchanan*, 90 Wn.2d 584, 607, 584 P.2d 918 (1978). This makes sense since article II of the Washington Constitution relates to legislative authority in state government, which is vested in both the legislature and the people of the state. While appellants correctly point out that this court had applied article II, section 19 to statewide initiatives, see *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995), they cite no case applying the provision to a county charter or other provision.

Appellants have likewise failed to establish that the equities favor an injunction. The election ballots have been printed, ballots have already been sent out to overseas and permanent absentee voters (with some votes already cast), the remainder of the ballots will be sent out on April 3, 2013, vote tallying equipment has been programmed and tested, and the election date (when votes begin to be tallied) is less than a month away. Lopez Island voters are set to vote on a school bond measure, and appellants do not explain how that vote could timely go forward if the council election is enjoined. No doubt rescheduling the election would come at considerable expense to the county,⁶ and would deprive voters who passed the charter amendments of the chance to vote in a potentially valid election. Appellants urge that there have been several county council elections of late, leaving county governance in disarray, and suggest that the court should prevent a potentially invalid election from taking place, either by enjoining the election or by deciding the appeal before the election. But the greater harm seems to be preventing a scheduled election from taking place, especially when election opponents fail to muster any authority questioning the validity of the election. The request for an injunction must be denied.

This court may on its own motion or on motion of a party set a review for accelerated disposition. RAP 18.12. There are times when it is necessary for the court

⁶ The county elections supervisor estimates the cost of this election at \$24,000 to \$25,000, and the cost of another countywide special election at \$25,000.

to abandon its usual deliberative process and move with considerable speed in deciding a case, particularly in matters of great moment or when irreparable harm to a party would result from delay. Thus, for example, the court has acted swiftly in matters of great statewide urgency, as evidenced by decisions involving statewide election contests and major governmental projects. *See, e.g., McDonald v. Sec'y of State*, 153 Wn.2d 201, 103 P.3d 722 (2004) (rejection of mandamus action seeking an order directing the secretary of state to promulgate uniform standards for manual recount taking place in state's election for governor); *Wash. State Republican Party v. King County Div. of Records*, 153 Wn.2d 220, 103 P.3d 725 (2004) (action seeking to compel recanvassing of ballots in state's election for governor); *Dep't of Ecology v. State Fin. Comm.*, 116 Wn.2d 246, 804 P.2d 1241 (1991) (construction of the Department of Ecology headquarters building); *CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996) (construction of major league baseball stadium); *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997) (major public-private development in downtown Spokane); *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207, 11 P.3d 762 (2001), 27 P.3d 608 (2001) (challenge to I-695).

But it does not appear either practical or even desirable to accelerate this appeal in hopes that it may be decided before April 23, 2013. The court is scheduled to meet in conferences on April 3 and 4, 2013, but not thereafter during the month. Perhaps before April 23 the parties could adequately perfect the record, brief the case, and present oral argument such that the court could produce a well-considered decision addressing all of the legal issues and the proper remedy (a question barely touched on by appellants' submissions so far). But that is far from a sure thing, and proceeding with such haste has attendant risks. As importantly, appellants fail to show what great harm will befall them or others if the election happens before this appeal is

decided. Better then to adopt a schedule that would permit the court, should the appeal be retained, to hear oral argument in the September term.

The motion for an injunction is denied. Insofar as appellants seek to accelerate review so that the appeal can be decided before April 23 or May 6, 2013, that request is also denied. The clerk will set a perfection and briefing schedule that will permit oral argument to be heard in the September 2013 term, should the court retain the appeal.⁷


COMMISSIONER

April 2, 2013

⁷ The court ordinarily decides whether to retain an appeal after the opening briefs have been filed.