

Court of Appeals No. 351742
Grant Co. Superior Court Cause No. 17-2-00228-0

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

FRED MEISE, DOUG BIERMAN, PAT HOCHSTATTER, MIKE
COUNSELL, JASON MELCHER, AND JARED POPE,

Petitioners,

vs.

MICHELE JADERLUND, GRANT COUNTY AUDITOR,

Respondent,

and

KATIE PHIPPS, MICHELLE KITTRELL, KRISTA HAMILTON,
SUSAN MOBERG, CRAIG HARDER, DENNIS KEARNS, and
BARBARA KEARNS,

Intervenors.

PETITIONERS' OPENING BRIEF

George Ahrend, WSBA #25160
Ahrend Law Firm PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

INTRODUCTION..... 1

ASSIGNMENT OF ERROR..... 2

ISSUE PERTAINING TO ASSIGNMENTS OF ERROR..... 2

STATEMENT OF THE CASE..... 3

SUMMARY OF ARGUMENT..... 5

ARGUMENT 6

 A. Overview of a county auditor's obligation under RCW 29A.60.165(1) and (2)(a) to notify voters by telephone of missing or non-matching ballot signatures. 6

 B. The Grant County Auditor's failure to comply with the "telephone requirement" of RCW 29A.60.165(1) and (2)(a) requires nullification of the election..... 8

 C. The superior court erred in characterizing the Grant County Auditor's conduct as "substantial compliance" with the telephone requirement because the Auditor never attempted to comply with the statute. 11

 D. The superior court erred in applying the doctrine of substantial compliance because the purpose of the telephone requirement is not accomplished by other forms of notice..... 14

 E. The superior court erred in applying the doctrine of substantial compliance because the Grant County Auditor's violation of the telephone requirement disenfranchised 31 voters in an election that was decided by two votes. 18

CONCLUSION.....20

CERTIFICATE OF SERVICE 21

APPENDIX

TABLE OF AUTHORITIES

Cases

<i>Citizens Alliance for Property Rights Legal Fund v. San Juan County,</i> 184 Wn. 2d 428, 359 P.2d 753 (2015)	9
<i>Cont'l Sports Corp. v. Dep't of Labor & Indus.,</i> 128 Wn. 2d 594, 910 P.2d 1284 (1996).....	12, 14
<i>Crosby v. County of Spokane,</i> 137 Wn. 2d 296, 971 P.2d 32 (1999)	12, 14
<i>Davis v. Gibbs,</i> 39 Wn. 2d 481, 236 P.2d 545 (1951)	12-14
<i>Davies v. Krueger,</i> 36 Wn. 2d 649, 219 P.2d 969 (1950)	17
<i>Filmore LLLP v. Unit Owners Ass'n of Centre Pointe Condo.,</i> 184 Wn. 2d 170, 355 P.3d 1128 (2015).....	9
<i>Goldmark v. McKenna,</i> 172 Wn.2d 568, 259 P.3d 1095 (2011)	7
<i>Groom v. Port of Bellingham,</i> 189 Wash. 445, 65 P.2d 1060 (1937)	15-16, 18
<i>Humphrey Indus., Ltd. v. Clay St. Assocs., LLC,</i> 170 Wn. 2d 495, 242 P.3d 846 (2010).....	14
<i>Lee v. Bellingham Sch. Dist.,</i> 107 Wash. 482, 182 P. 580 (1919).....	15
<i>McCormick v. Okanogan County,</i> 90 Wn. 2d 71, 578 P.2d 1303 (1978)	15-16
<i>Murphy v. City of Spokane,</i> 64 Wash. 681, 117 P. 476 (1911)	19

<i>Pemberton v. Superior Court</i> , 196 Wash. 468, 83 P.2d 345 (1938).....	18
<i>Perez-Crisantos v. State Farm Fire & Cas. Co.</i> , 187 Wn. 2d 669, 389 P.3d 476 (2017)	10
<i>Rands v. Clark County</i> , 79 Wash. 152, 139 P. 1090 (1914)	15-16, 18
<i>Ruland v. State</i> , 144 Wn. App. 263, 182 P.3d 470 (2008)	12
<i>School Dist. No. 81 v. Taxpayers</i> , 37 Wn. 2d 669, 225 P.2d 1063 (1950)	12, 14-16
<i>Seymour v. City of Tacoma</i> , 6 Wash. 427, 33 P. 1059 (1893)	15-16
<i>Shaw v. Shumway</i> , 3 Wn. 2d 112, 99 P.2d 938 (1940).....	16-17
<i>State ex rel. Dore v. Superior Court</i> , 171 Wash. 423, 18 P.2d 51 (1933).....	15
<i>State v. Doherty</i> , 16 Wash. 382, 47 P. 958 (1897)	15
<i>Sudduth v. Chapman</i> , 88 Wn. 2d 247, 558 P.2d 806 (1977).....	11, 16, 18
<i>Vickers v. Schultz</i> , 195 Wash. 651, 81 P.2d 808 (1938)	15-17, 19

Statutes and Rules

Final Bill Report, S.H.B. 2695, 59 th Legis., Reg. Sess. (2006)	7-8
Laws of 2005, ch. 243, § 8	7
Laws of 2006, ch. 208, § 1.....	7-8
Laws of 2011, ch. 10, § 54.....	7

RCW 29A.04.001	8
RCW 29A.04.055	8
RCW 29A.04.205	1-2
RCW 29A.04.206	2
RCW 29A.04.206(1).....	1
RCW 29A.04.216.....	1-2, 9
RCW 29A.60.165.....	2, 6, 8
RCW 29A.60.165(1) and (2)(a).....	passim
RCW 29A.68.013.....	10
RCW 29A.68.020	8
RCW 29A.68.020(1).....	8-9
RCW 29A.68.020(5)	10
RCW 29A.68.030 and .040	10
RCW 29A.68.050	10
RCW 29A.68.070-.080	10
RCW 29A.68.090-.110	10

Other Authorities

<i>Merriam-Webster Online</i>	9
-------------------------------------	---

I. INTRODUCTION

This appeal involves the disenfranchisement of 31 voters in a special election that was decided by only two votes. "It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud." RCW 29A.04.205. "The rights of Washington voters are protected by its constitution and laws and include ... The right of qualified voters to vote at all elections." RCW 29A.04.206(1) (ellipses added). County auditors are charged with responsibility to supervise elections within their respective counties. RCW 29A.04.216. To promote the right to vote and fulfill their responsibilities, auditors must attempt to notify voters by telephone if the signature on their ballot declaration is missing or perceived not to match the handwriting of the signature on the voter's registration. RCW 29A.60.165(1) & (2)(a). This requirement is especially important since elections are now conducted by mail, and

it is not possible to address a missing or non-matching signature at a polling place.¹

Here, it is undisputed that the Grant County Auditor completely failed to comply with RCW 29A.60.165(1) and (2)(a) in connection with the special election held February 14, 2017, regarding Moses Lake School District No. 161 Proposition No. 1. While this case arises in the context of an election regarding a school district bond measure, essentially political arguments regarding the merits of the bond measure are not legally cognizable and do not justify the disenfranchisement of eligible voters. The election should be declared invalid, and the result should be set aside until a proper election can be held.

II. ASSIGNMENT OF ERROR

The superior court erred in denying Petitioners' election contest petition. CP 135-36 (order); RP 38:4-55:14 (oral ruling).

III. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Did the superior court err in determining that substantial compliance with "notice in general" excuses a complete failure to comply with "the telephone requirement" of RCW 29A.60.165(1) and (2)(a) under the circumstances present in this case, where the

¹ The full text of the current versions of RCW 29A.04.205, 29A.04.206, 29A.04.216 and 29A.60.165 are reproduced in the Appendix to this brief.

votes of 31 eligible voters who had demonstrated their intent to vote were not counted and the electoral margin was only two votes?

IV. STATEMENT OF THE CASE

The facts are not disputed. A special election was held on February 14, 2017, regarding Moses Lake School District No. 161 Proposition No. 1, which sought voter approval for the school district to issue \$135 million in bonds. One hundred twenty-six ballots were initially not counted because they were missing signatures or deemed to have irregular signatures that did not appear to match the handwriting of the signatures on the voter's registration file. CP 63-64. The Grant County Auditor's office sent a letter to voters with missing or irregular signatures, and all but 31 corrected their ballots. CP 64. The auditor's office admittedly did not attempt to make telephone contact with the remaining 31 voters who did not receive or respond to the letter, in violation of RCW 29A.60.165(1) and (2)(a). CP 32 (¶ 2); CP 64 (¶ 11).² When the additional votes were counted, the bond measure passed by two votes. CP 59.³

² The parties' stipulation, CP 31-33, is reproduced in the Appendix.

³ A total of 9,459 votes were cast. The measure required a minimum of 60% to pass, i.e., 5,675.4 votes. The measure passed by 5,678 votes. CP 59.

Petitioners, all registered voters within Moses Lake School District No. 161, filed an election contest petition. CP 3-13.⁴ The Grant County Auditor, Michele Jaderlund, responded to the petition. CP 51-70. A group of bond measure supporters was allowed to intervene, over objection. CP 34-41. Moses Lake School District No. 161 was allowed to appear as amicus curiae, also over objection. RP 4:23-8:12.

All parties acknowledged the auditor's failure to comply with RCW 29A.60.165(1) and (2)(a), although they disagreed regarding the effect of her failure to comply with the statute. In addition, the auditor and intervenors alleged that the election contest petition was untimely.

The superior court determined that the petition was timely. RP 42:25-43:3. However, the court denied the petition on the merits, reasoning that there was "substantial compliance" with the requirement of "notice in general," even though "there was no compliance" with what the court described as "the telephone requirement" of RCW 29A.60.165(1) and (2)(a). RP 54:2-55:23.

From this decision, Petitioners timely appeal. CP 125-34.

⁴ Petitioners are Fred Meise, Doug Bierman, Pat Hochstatter, Jason Melcher, and Jared Pope. Mike Counsell joined the petition, but is not party to the appeal. CP 125.

V. SUMMARY OF ARGUMENT

The election on Moses Lake School District No. 161 Proposition No. 1 should be annulled because of the Grant County Auditor's admitted failure to comply with "the telephone requirement" of RCW 29A.60.165(1) and (2)(a). The Auditor never attempted to comply with the statutory requirement, let alone render "substantial compliance" and the purpose of the telephone requirement is not accomplished by other forms of notice. The requirement provides voters who do not receive or respond to a letter from the Auditor notifying them of a missing or non-matching signature on their ballot with an opportunity to correct their ballot and ensure that their vote is counted. It is especially important now that elections are conducted exclusively by mail, as it is no longer feasible to address missing or non-matching signatures at a polling place. No other election notice requirement is directed at this subset of voters, nor is any other notice requirement directed to this particular problem. The Auditor's violation of the telephone requirement effectively disenfranchises 31 voters in an election that was decided by only two votes, and the result of the election should be set aside until a proper election can be held.

VI. ARGUMENT

A. Overview of a county auditor's obligation under RCW 29A.60.165(1) and (2)(a) to notify voters by telephone of missing or non-matching ballot signatures.

RCW 29A.60.165 requires the county auditor to notify voters if the signature on their ballot is missing or does not appear to match the signature in the voter's registration file. Specifically, the statute provides:

(1) ***If the voter neglects to sign the ballot declaration***, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned declaration. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, ***then the auditor shall attempt to notify the voter by telephone***, using the voter registration record information.

(2)(a) ***If the handwriting of the signature on a ballot declaration is not the same as the handwriting of the signature on the registration file***, the auditor shall notify the voter by first-class mail, enclosing a copy of the declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, ***then the auditor***

shall attempt to notify the voter by telephone,
using the voter registration record information.

(Emphasis added.)

As originally enacted, this statute applied only to absentee and provisional ballots, and it required telephone notice prior to notice by mail. *See* Laws of 2005, ch. 243, § 8. The statute was subsequently amended to change the order of notice, requiring notice by mail first, and then by telephone if the voter did not respond to a letter. *See* Laws of 2006, ch. 208, § 1. When the Legislature later required counties to conduct elections entirely by mail, the language of the statute referring to absentee and provisional ballots was deleted, so that it would apply to all ballots. *See* Laws of 2011, ch. 10, § 54.

The word "shall" in the statute indicates that the auditor's obligation to notify the voter by telephone is mandatory. *See, e.g., Goldmark v. McKenna*, 172 Wn.2d 568, 575, 259 P.3d 1095 (2011) (stating "'shall' when used in a statute, is presumptively imperative and creates a mandatory duty unless a contrary legislative intent is shown"). The mandatory nature of the obligation is confirmed by the relevant legislative history. *See* Final Bill Report, S.H.B. 2695, 59th Legis., Reg. Sess. (2006) (stating "the voter ***must*** be contacted

by phone and advised of the procedure to correct the ballot"; emphasis added).⁵

In this case, the Grant County Auditor's violation of this mandatory statutory obligation is undisputed, and the only question before the Court is the effect of that violation.⁶

B. The Grant County Auditor's failure to comply with the "telephone requirement" of RCW 29A.60.165(1) and (2)(a) requires nullification of the election.

A registered voter may challenge the result of an election on any measure "[f]or misconduct on the part of any election officer involved therein[.]" RCW 29A.68.020(1) (brackets added).⁷ There is no dispute that Petitioners are registered voters in Moses Lake School District No. 161.

There is also no dispute that the Grant County Auditor is an "election officer." An "election officer" is defined to include "any officer who has a duty to perform relating to elections under the provisions of any statute." RCW 29A.04.055; *see also* RCW 29A.04.001 (regarding scope of definitions). County auditors have a general duty to supervise all elections within their respective

⁵ The cited bill report accompanied the 2006 amendment to RCW 29A.60.165. The bill report and the session law, Laws of 2006, ch. 208, are reproduced in the Appendix.

⁶ Because this question involves determining the legal significance of undisputed facts, the standard of review is *de novo* and this Court owes no deference to the decision of the superior court.

⁷ RCW 29A.68.020 is reproduced in the Appendix.

jurisdictions, RCW 29A.04.216; and a specific duty to notify voters by telephone if their ballots have missing or non-matching signatures, RCW 29A.60.165(1) & (2)(a).

There appears to be no dispute that the auditor's failure to notify voters by telephone constitutes "misconduct." RCW 29A.68.020(1). The word "misconduct" is undefined. In the absence of definition, statutory language should be given its ordinary meaning as discerned from common dictionaries. *See Filmore LLLP v. Unit Owners Ass'n of Centre Pointe Condo.*, 184 Wn. 2d 170, 174, 355 P.3d 1128 (2015). The ordinary meaning of "misconduct" is "mismanagement especially of governmental or military responsibilities." *Merriam-Webster Online*, s.v. "misconduct" (first definition; available at www.m-w.com; viewed May 25, 2017). This definition is sufficiently broad to encompass the auditor's violation of RCW 29A.60.165(1) and (2)(a).

Furthermore, statutory language must be read in the context of a statute in which it appears. *See Citizens Alliance for Property Rights Legal Fund v. San Juan County*, 184 Wn. 2d 428, 437, 359 P.2d 753 (2015). Here, the word "misconduct" is illuminated by the mandatory statutory obligation to notify voters by telephone. RCW 29A.60.165(1) & (2)(a). The word appears in statutes governing

election contest petitions, and is equated with "wrongful act," "neglect of duty," and "error or omission" in RCW 29A.68.013, and "error and omission" in RCW 29A.68.030 and .040, regarding the procedure for such petitions.⁸ In context, the statutory language is sufficiently broad to encompass the auditor's violation of RCW 29A.60.165(1) and (2)(a).

The statutory remedy for misconduct by an election officer is "annulling and setting aside" the election. RCW 29A.68.050.⁹ Nullification does not require proof that the outcome of the election would have been different. A court may only consider whether the misconduct had an effect on the result of the election if the election contest involves members of the county canvassing board, RCW 29A.68.070-.080, or illegal votes, RCW 29A.68.090-.110.¹⁰ This case does not involve the canvassing board or illegal votes, so these limitations on the nullification of an election are inapplicable here. *See Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn. 2d 669, 680, 389 P.3d 476 (2017) (noting "[w]here a statute specifically designates the things upon which it operates, there is an

⁸ RCW 29A.68.013, 29A.68.030 and 29A.68.040 are reproduced in the Appendix.

⁹ RCW 29A.68.050 is reproduced in the Appendix.

¹⁰ "Illegal votes" refers to multiple votes by a single person or votes cast by persons not eligible to vote. RCW 29A.68.020(5).

inference that the Legislature intended all omissions"; quotation omitted).

Despite the lack of any statutory defense or exception to misconduct by an official warranting annulment of an election based on "substantial compliance," the superior court nonetheless determined that the Grant County Auditor's violation of RCW 29A.60.165(1) and (2)(a) was excused on that basis.

C. The superior court erred in characterizing the Grant County Auditor's conduct as "substantial compliance" with the telephone requirement because the Auditor never attempted to comply with the statute.

While acknowledging that "there was no compliance" with the "telephone requirement," the superior court concluded that there was "substantial compliance" with "notice in general." RP 54:2-16. Under prior election contest statutes, the courts have applied the doctrine of substantial compliance to overlook technical violations of the laws governing elections. *See Sudduth v. Chapman*, 88 Wn. 2d 247, 255, 558 P.2d 806 (1977). However, the courts have never dispensed with statutory requirements under the guise of substantial compliance. "[B]efore there can be substantial compliance, there must be **some attempt** to comply with the statute ... The doctrine of substantial compliance ought not to be

carried to the extent of holding that unofficial publication and dissemination of information of an impending election can take the place of, and practically dispense with, required statutory notice." *Davis v. Gibbs*, 39 Wn. 2d 481, 485-86, 236 P.2d 545 (1951) (emphasis in original; brackets & ellipses added); accord *School Dist. No. 81 v. Taxpayers*, 37 Wn. 2d 669, 671-72, 225 P.2d 1063 (1950) (stating "statutes ... calling for the publication of election notices ... will be considered to have been substantially complied with ***when an attempt has been made to comply with the statute***"; ellipses & emphasis added). This is in accord with the substantial compliance doctrine as applied in other contexts. See, e.g., *Ruland v. State*, 144 Wn. App. 263, 274, 182 P.3d 470 (2008) (stating "[g]enerally, 'noncompliance with a statutory mandate is not substantial compliance' In cases where courts have found substantial compliance, there has been actual compliance with the statute, but with minor procedural faults"; brackets & ellipses added; quoting *Crosby v. County of Spokane*, 137 Wn. 2d 296, 302, 971 P.2d 32 (1999), and *Cont'l Sports Corp. v. Dep't of Labor & Indus.*, 128 Wn. 2d 594, 602, 910 P.2d 1284 (1996)).

For example, in *Davis* notice of an annexation election was posted, "but no effort was made to publish the official notice in a

newspaper printed and published within the limits of the territory, although such a newspaper was available," contrary to a requirement of the relevant statute. 39 Wash. at 485. Under these circumstances, the Court found no substantial compliance, even though notice of the election was otherwise widely available:

It appears from the findings that practically every conceivable means of notoriety and publicity invented and devised by science and zealous publicity experts, except sky-writing, were used prior to the election in the annexation area. Those for and against annexation organized into opposing factions. They used everything from television to letters for school children to take home to their parents.

Id. at 484-85. In light of *Davis*, the complete failure to comply with a statutory requirement cannot be justified on any grounds.

Similarly, in this case there can be no substantial compliance because the Grant County Auditor never attempted to comply with the telephone requirement of RCW 29A.60.165(1) and (2)(a). The doctrine of substantial compliance is inapplicable under these circumstances. Otherwise, the telephone requirement would effectively be eliminated from the statute.

D. The superior court erred in applying the doctrine of substantial compliance because the purpose of the telephone requirement is not accomplished by other forms of notice.

Substantial compliance justifies overlooking the violation of an election requirement only if the purpose of the requirement is otherwise accomplished. *See Davis*, 39 Wn. 2d at 485 (stating "[i]n all cases where we have approved the doctrine of substantial compliance, that which was done, although irregular or deficient, **tended** to accomplish that which would have been accomplished had the statute been followed specifically"; emphasis in original; brackets added); *School Dist. No. 81*, 37 Wn. 2d at 671-72 (equating substantial compliance with satisfying "the purpose of the requirement of notice"). This is in accord with the substantial compliance doctrine as applied in other contexts. *See, e.g., Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 170 Wn. 2d 495, 504, 242 P.3d 846 (2010) (stating "[a] party substantially complies with a statutory directive when it satisfies the substance essential to the purpose of the statute"; brackets added; citing *Crosby* and *Cont'l Sports, supra*).

In this case, the purpose of the telephone requirement of RCW 29A.60.165(1) and (2)(a) is not accomplished by other forms of notice. The telephone requirement provides voters who do not

receive or respond to their letter from the auditor with a second chance to correct their ballot and ensure that their vote is counted. This requirement is especially important now that elections are conducted exclusively by mail, as it is not feasible to address a missing or non-matching signature at a polling place. No other notice requirement is directed at this subset of voters, and no other notice requirement is directed to this particular issue.

Before the superior court, the Grant County Auditor and Intervenor relied for the most part on cases involving technical violations of **pre**-election notice requirements to support their argument for substantial compliance with the **post**-election telephone requirement. See CP 54-55 (Auditor, citing *Rands v. Clark County*, 79 Wash. 152, 139 P. 1090 (1914); *State ex rel. Dore v. Superior Court*, 171 Wash. 423, 18 P.2d 51 (1933); *Vickers v. Schultz*, 195 Wash. 651, 81 P.2d 808 (1938); *School Dist. No. 81*, *supra*; *McCormick v. Okanogan County*, 90 Wn. 2d 71, 578 P.2d 1303 (1978)); CP 81 (Intervenor, additionally citing *Seymour v. City of Tacoma*, 6 Wash. 427, 33 P. 1059, 1060 (1893); *State v. Doherty*, 16 Wash. 382, 47 P. 958 (1897); *Lee v. Bellingham Sch. Dist.*, 107 Wash. 482, 182 P. 580 (1919); *Groom v. Port of*

Bellingham, 189 Wash. 445, 65 P.2d 1060 (1937); *Shaw v. Shumway*, 3 Wn. 2d 112, 118-19, 99 P.2d 938 (1940)).

However, in addition to the fact that the telephone requirement of RCW 29A.60.165(1) and (2)(a) is a unique form of notice, pre-election notice cases are distinguishable in two key ways that can be discerned from the *Vickers* case, which either cited, or was cited by, the other cases on which the Auditor and Intervenors rely. See 195 Wash. 2d at 654-58 (discussing *Seymour*, *Groom*, and *Rands*, *supra*); *Shaw*, 3 Wn. 2d at 118-19 (discussing *Vickers*); *School Distr. No. 81*, 37 Wn. 2d at 672 (citing *Vickers*); *McCormick*, 90 Wn. 2d at 75 (citing *Vickers*).

First, pre-election notice is directed to potential voters, whereas the telephone requirement of RCW 29A.60.165(1) and (2)(a) is directed to actual voters who have already submitted ballots, albeit with missing or non-matching signatures. In this way, the auditor's failure to satisfy the telephone requirement is a more direct infringement on the right to vote. See *Vickers*, 195 Wash. at 657 (stating "[t]he want of statutory notice, it is clear, did not result in deprivation of sufficient number of the electors of the opportunity to exercise their franchise"; brackets added); see also *Sudduth*, 88 Wn. 2d at 255 (stating *Vickers* and other authorities

"do not support the proposition that irregularities will be overlooked where they result in the denial of the franchise").

Second, a person objecting to pre-election notice is able to discover and raise the objection before the election occurs, whereas a person who submits a ballot with a missing or non-matching signature cannot raise violation of the telephone requirement beforehand. Deeming substantial compliance with pre-election notice requirements to be sufficient minimizes the prospect that a voter will await the outcome of the election to see if their candidate or position prevails before raising an objection. There is no similar opportunity for abuse with respect to the telephone requirement, and the grounds for permitting substantial compliance are correspondingly less. *See Vickers*, 195 Wash. at 658 (stating "courts are more liberal in permitting a deviation from the [notice] statute where an attack is made after the election is held than where the attack is made prior to the election"; brackets added); *see also Davies v. Krueger*, 36 Wn. 2d 649, 653-54, 219 P.2d 969 (1950) (quoting *Vickers* for this proposition and describing the case as "controlling"); *Shaw*, 3 Wn. 2d at 119 & 121 (similar).

Any of the foregoing distinctions is sufficient to render the cases cited by the Grant County Auditor and Intervenors inapplicable to the issue before the Court.

E. The superior court erred in applying the doctrine of substantial compliance because the Grant County Auditor's violation of the telephone requirement disenfranchised 31 voters in an election that was decided by two votes.

The substantial compliance doctrine does not permit the Court to overlook irregularities that result in denial of the right to vote. *See Sudduth*, 88 Wn. 2d at 255; *see also Pemberton v. Superior Court*, 196 Wash. 468, 480, 83 P.2d 345 (1938) (stating "courts should not be too ready to reject ballots or votes on account of the violation of technical requirements, especially in the absence of a charge of fraud, lest, in so doing, they disfranchise [sic] persons who voted in entire good faith"; brackets added).

Even cases involving pre-election notice recognize that a showing of disenfranchisement precludes substantial compliance. *See, e.g., Rands*, 79 Wash. at 159 (stating "the requirements of a statute providing for the giving of notices of an election, either general or special, were directory rather than mandatory, unless ... the court can see from the record that the result of the election might have been different"; ellipses added); *Groom*, 189 Wash. at

447 (stating "[a]n election will not be declared invalid for any irregularities when it appears that ... the want of statutory notice did not result in depriving sufficient of the electors of the opportunity to exercise their franchise to change the result of the election"; brackets & ellipses added); *Vickers*, 195 Wash. at 657 (stating "[t]he want of statutory notice, it is clear, did not result in deprivation of sufficient number of the electors of the opportunity to exercise their franchise to change the result of the election"; brackets added); *see also* *Murphy v. City of Spokane*, 64 Wash. 681, 687, 117 P. 476 (1911) (upholding election despite violations of precinct staffing requirements in part because "[n]or does it appear that any qualified voters came to the polls to vote before the proper closing hour, and were prevented from voting because the polls were then closed"; brackets added).

In this case, 31 voters were disenfranchised by the Grant County Auditor's violation of the telephone requirement of RCW 29A.60.165(1) and (2)(a). Accordingly, even if the Grant County Auditor had substantially complied with the telephone requirement, the election would still have to be annulled and set aside.

VII. CONCLUSION

Based on the foregoing, Petitioners respectfully ask the Court to reverse the superior court and annul and set aside the February 14, 2017, special election on Moses Lake School District No. 161 Proposition No. 1.

Respectfully submitted this 22nd day of May, 2017.

s/George M. Ahrend
George M. Ahrend, WSBA #25160
Ahrend Law Firm PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
Phone (509) 764-9000
Facsimile (509) 464-6290
Email gahrend@ahrendlaw.com

CERTIFICATE OF SERVICE

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I served the document to which this is annexed by email and First Class Mail, postage prepaid, as follows:

Attorney for Respondent:

James T. Mitchell, WSBA #31031
Garth Dano
Prosecuting Attorney
P.O. Box 37
Ephrata, WA 98823
(509) 754-2011
jtmitchell@grantcountywa.gov

Attorneys for Intervenors:

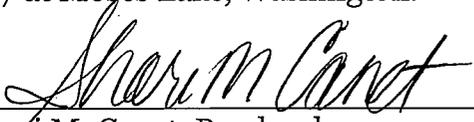
Jerry J. Moberg, WSBA #5262
Jerry Moberg & Associates, P.S.
P.O. Box 130
124 3rd Ave. SW
Ephrata, WA 98823
(509) 754-2356
jmoberg@jmlawps.com

Attorneys for Amicus Curiae

Moses Lake School District:

Thomas F. Ahearne, WSBA #14844
Lee R. Marchisio, WSBA #45351
Foster Pepper PLLC
1111 Third Ave., Ste. 3000
Seattle, WA 98101-3296
(206) 447-4400
ahearne@foster.com
lee.marchisio@foster.com

Signed on May 22, 2017 at Moses Lake, Washington.



Shari M. Canet, Paralegal

APPENDIX

RCW 29A.04.205	A-1
RCW 29A.04.206	A-2
RCW 29A.04.216	A-3
RCW 29A.60.165	A-4
RCW 29A.68.013	A-6
RCW 29A.68.020	A-7
RCW 29A.68.030	A-9
RCW 29A.68.040	A-10
RCW 29A.68.050	A-11
Laws of 2006, ch. 208	A-12
Final Bill Report S.H.B. 2695, 59 th Legis., Reg. Sess. (2006)	A-14
Stipulation, CP 31-33	A-16

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.04. General Provisions (Refs & Annos)
General Provisions

West's RCWA 29A.04.205

29A.04.205. State policy

Currentness

It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud. The election registration laws and the voting laws of the state of Washington must be administered without discrimination based upon race, creed, color, national origin, sex, or political affiliation.

Credits

[2003 c 111 § 132, eff. July 1, 2004; 2001 c 41 § 1. Formerly RCW 29.04.001.]

Notes of Decisions (1)

West's RCWA 29A.04.205, WA ST 29A.04.205

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Negative Treatment Vacated by *San Geronimo Caribe Project, Inc. v. Acevedo-Vila*, 1st Cir.(Puerto Rico), June 17, 2011



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.04. General Provisions (Refs & Annos)
General Provisions

West's RCWA 29A.04.206

29A.04.206. Voters' rights

Effective: September 1, 2006
Currentness

The rights of Washington voters are protected by its constitution and laws and include the following fundamental rights:

- (1) The right of qualified voters to vote at all elections;
- (2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote;
- (3) The right to cast a vote for any candidate for each office without any limitation based on party preference or affiliation, of either the voter or the candidate.

Credits

[2005 c 2 § 3 (Initiative Measure No. 872, approved November 2, 2004).]

Notes of Decisions (1)

West's RCWA 29A.04.206, WA ST 29A.04.206

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.04. General Provisions (Refs & Annos)
General Provisions

West's RCWA 29A.04.216

29A.04.216. County auditor--Duties--Exceptions

Effective: July 28, 2013

Currentness

The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to provide the supplies and materials necessary for the conduct of elections; and to publish and post notices of calling such primaries and elections in the manner provided by law. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections.

Credits

[2013 c 11 § 7, eff. July 28, 2013; 2011 c 10 § 6, eff. July 22, 2011; 2004 c 271 § 104, eff. June 10, 2004.]

Notes of Decisions (2)

West's RCWA 29A.04.216, WA ST 29A.04.216

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.60. Canvassing

West's RCWA 29A.60.165

29A.60.165. Unsigned ballot declarations

Effective: July 28, 2013
Currentness

(1) If the voter neglects to sign the ballot declaration, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned declaration. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(2)(a) If the handwriting of the signature on a ballot declaration is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by first-class mail, enclosing a copy of the declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(b) If the signature on a ballot declaration is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on a ballot declaration is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter submitted updated information. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

Credits

[2013 c 11 § 63, eff. July 28, 2013; 2011 c 10 § 54, eff. July 22, 2011. Prior: 2006 c 209 § 4, eff. July 1, 2006; 2006 c 208 § 1, eff. June 7, 2006; 2005 c 243 § 8, eff. July 24, 2005.]

West's RCWA 29A.60.165, WA ST 29A.60.165

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.68. Contesting an Election

West's RCWA 29A.68.013

29A.68.013. Prevention and correction of frauds and errors--
Primary, election, challenge to certification of measure

Effective: June 9, 2016
Currentness

Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) A wrongful act other than as provided for in RCW 29A.68.011 has been performed or is about to be performed by any election officer; or
- (2) Any neglect of duty on the part of an election officer other than as provided for in RCW 29A.68.011 has occurred or is about to occur; or
- (3) An error or omission has occurred or is about to occur in the official certification of any primary or election, including a challenge to the certification of any measure.

An affidavit of an elector under this subsection shall be filed with the appropriate court no later than ten days following the official certification of the primary or election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061.

Credits

[2016 c 130 § 2, eff. June 9, 2016.]

West's RCWA 29A.68.013, WA ST 29A.68.013

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.68. Contesting an Election

West's RCWA 29A.68.020

29A.68.020. Commencement by registered voter--Causes for

Effective: June 9, 2016
Currentness

Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office, to challenge the right of a candidate to appear on the general election ballot after a primary, or to challenge certification of the result of an election on any measure:

- (1) For misconduct on the part of any election officer involved therein;
- (2) Because the person whose right is being contested was not, at the time the person was declared elected, eligible to that office;
- (3) Because the person whose right is being contested was, previous to the election, convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;
- (4) Because the person whose right is being contested gave a bribe or reward to a voter or to an election officer for the purpose of procuring the election, or offered to do so;
- (5) On account of illegal votes.
 - (a) Illegal votes include but are not limited to the following:
 - (i) More than one vote cast by a single voter;
 - (ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.
 - (b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011 or 29A.68.013.

Credits

[2016 c 130 § 3, eff. June 9, 2016; 2013 c 11 § 72, eff. July 28, 2013; 2011 c 10 § 64, eff. July 22, 2011; 2007 c 374 § 4, eff. July 22, 2007; 2003 c 111 § 1702, eff. July 1, 2004; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

Notes of Decisions (29)

West's RCWA 29A.68.020, WA ST 29A.68.020

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.68. Contesting an Election

West's RCWA 29A.68.030

29A.68.030. Affidavit of error or omission--Contents--Witnesses

Effective: June 9, 2016
Currentness

An affidavit of an elector filed pursuant to RCW 29A.68.013(3) must set forth specifically:

- (1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office or measure is to be exercised;
- (2) The name of the person whose right is being contested or the name of the measure being contested;
- (3) The office;
- (4) The particular causes of the contest.

No statement of contest may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission must be given the opportunity to call any witness, including the candidate.

Credits

[2016 c 130 § 4, eff. June 9, 2016; 2007 c 374 § 5, eff. July 22, 2007; 2003 c 111 § 1703, eff. July 1, 2004; 1977 ex.s. c 361 § 102; 1965 c 9 § 29.65.020. Prior: (i) Code 1881 § 3110; 1865 p 43 § 6; RRS § 5371. (ii) Code 1881 § 3112; 1865 p 44 § 8; RRS § 5373. Formerly RCW 29.65.020.]

Notes of Decisions (10)

West's RCWA 29A.68.030, WA ST 29A.68.030

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.68. Contesting an Election

West's RCWA 29A.68.040

29A.68.040. Hearing date--Issuance of citation--Service

Currentness

Upon such affidavit being filed, the clerk shall inform the judge of the appropriate court, who may give notice, and order a session of the court to be held at the usual place of holding the court, on some day to be named by the judge, not less than ten nor more than twenty days from the date of the notice, to hear and determine such contested election. If no session is called for the purpose, the contest must be determined at the first regular session of court after the statement is filed.

The clerk of the court shall also at the time issue a citation for the person charged with the error or omission, to appear at the time and place specified in the notice. The citation must be delivered to the sheriff and be served upon the party in person; or if the person cannot be found, by leaving a copy thereof at the house where the person last resided.

Credits

[2003 c 111 § 1704, eff. July 1, 2004; 1977 ex.s. c 361 § 103; 1965 c 9 § 29.65.040. Prior: (i) Code 1881 § 3113; 1865 p 44 § 9; RRS § 5374. (ii) Code 1881 § 3114; 1865 p 45 § 10; RRS § 5375. Formerly RCW 29.65.040.]

Notes of Decisions (6)

West's RCWA 29A.68.040, WA ST 29A.68.040

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

West's Revised Code of Washington Annotated
Title 29a. Elections (Refs & Annos)
Chapter 29A.68. Contesting an Election

West's RCWA 29A.68.050

29A.68.050. Witnesses to attend--Hearing of contest--Judgment

Effective: June 9, 2016
Currentness

The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so.

The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case.

If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. If in any such case it shall appear that the results of a measure are reversed, said court shall declare the change in result.

Credits

[2016 c 130 § 5, eff. June 9, 2016; 2003 c 111 § 1705, eff. July 1, 2004. Prior: 1965 c 9 § 29.65.050; prior: (i) Code 1881 § 3115; 1865 p 45 § 11; RRS § 5376. (ii) Code 1881 § 3116; 1865 p 45 § 12; RRS § 5377. (iii) Code 1881 § 3117; 1865 p 45 § 13; RRS § 5378. FORMER PARTS OF SECTION: (i) Code 1881 § 3119; 1865 p 45 § 15; RRS § 5379, now codified in RCW 29.65.055. (ii) Code 1881 § 3120; 1865 p 45 § 16; RRS § 5380, now codified in RCW 29.65.055. Formerly RCW 29.65.050.]

Notes of Decisions (5)

West's RCWA 29A.68.050, WA ST 29A.68.050

The statutes and Constitution are current with immediately effective legislation through Chapter 129 of the 2017 Regular Session of the Washington legislature.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

2006 Wash. Legis. Serv. Ch. 208 (S.H.B. 2695) (WEST)

WASHINGTON 2006 LEGISLATIVE SERVICE
59th Legislature, 2006 Regular Session

Additions are indicated by **Text**; deletions by
~~Text~~. Changes in tables are made but not highlighted.
Vetoed provisions within tabular material are not displayed.

CHAPTER 208
S.H.B. No. 2695
ELECTIONS—ABSENTEE VOTING—BALLOTS

AN ACT Relating to absentee or provisional ballot notice requirements; and amending RCW 29A.60.165.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 29A.60.165 and 2005 c 243 s 8 are each amended to read as follows:

<< WA ST 29A.60.165 >>

(1) If the voter neglects to sign the outside envelope of an absentee or provisional ballot, the auditor shall notify the voter by ~~telephone~~ **first class mail** and advise the voter of the correct procedures for completing the unsigned affidavit. ~~If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter.~~ **If the absentee ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.** In order for the ballot to be counted, the voter must either:

- (a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or
- (b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.

(2)(a) If the handwriting of the signature on an absentee or provisional ballot envelope is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by ~~telephone~~ **first class mail, enclosing a copy of the envelope affidavit**, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. ~~If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter.~~ **If the absentee or provisional ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.** In order for the ballot to be counted, the voter must either:

- (i) Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or
- (ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. **The voter may enclose with the affidavit a photocopy of a valid government or tribal issued identification document that includes the voter's current signature.** If the signature on the copy of the affidavit does not match the signature on file or the signature on the copy of the identification document, the voter must

appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.

(b) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.17 RCW and may be disclosed to interested parties on written request.

Approved March 24, 2006.

Effective June 7, 2006.

WA LEGIS 208 (2006)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

FINAL BILL REPORT

SHB 2695

C 208 L 06

Synopsis as Enacted

Brief Description: Modifying absentee or provisional ballot notice requirements.

Sponsors: By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Haigh, Sump and McDermott).

House Committee on State Government Operations & Accountability
Senate Committee on Government Operations & Elections

Background:

If a voter neglects to sign the absentee or provisional ballot envelope, the county auditor must notify the voter by telephone of the procedure for completing the unsigned affidavit. If the auditor is not able to personally talk with the voter by telephone, the voter must be contacted by first class mail. A voice mail message is not considered to be personally contacting the voter. In order for the ballot to be counted, the voter must appear in person and sign the envelope or sign and return a copy of the envelope provided by the auditor. If the handwriting on the absentee or provisional ballot envelope does not match the signature on file, the auditor must follow the same procedures to contact the voter. In order for the ballot to be counted the voter must appear in person and sign a new registration form no later than the day before the certification of the election, or sign and return a copy of the affidavit provided by the auditor. If the signature on the copy of the affidavit does not match the signature on file, the voter must appear in person and sign a new registration form no later than the day before certification of the election.

Summary:

The county auditor must notify a voter by first class mail in the event that the voter fails to sign the outside envelope of the absentee or provisional ballot or if the voter's signature does not match the signature on file in the voter registration file. If the voter has not responded to a mail notification, or if a ballot needing correction is received within three business days of the final meeting of the canvassing board, the voter must be contacted by phone and advised of the procedure to correct the ballot.

To correct a mismatched signature, a voter may sign and return a copy of the affidavit provided by the auditor, along with a copy of a government or tribal issued identification. If the signature on the affidavit does not match the signature on file or the signature on the identification, the voter must appear in person and sign a new registration form.

Votes on Final Passage:

House 97 0

Senate 35 14 (Senate amended)

House Refuses to Concur

Senate (Senate receded)

Senate 40 9 (Senate amended)

House 55 43 (House concurred)

Effective: June 7, 2006

RECEIVED
MAR 15 2017

FILED

2017 MAR 15 PM 3:18

GRANT COUNTY
PROSECUTING ATTORNEY

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

IN RE: FEBRUARY 14, 2017, SPECIAL
ELECTION ON MOSES LAKE SCHOOL
DISTRICT #161 PROPOSITION NO. 1

No. 17-2-00228-0

STIPULATION

FRED MEISE, DOUG BIERMAN, PAT
HOCHSTATTER, MIKE COUNSELL,
JASON MELCHER, AND JARED POPE,

Petitioners,

vs.

MICHELE JADERLUND, GRANT
COUNTY AUDITOR,

Respondent.

Pursuant to CR 2A, the parties, through undersigned counsel, stipulate as follows with respect to the February 14, 2017, special election on Moses Lake School District #161 Proposition No. 1:

1. It is anticipated that there will be no dispute that the Grant County Auditor sent letters to voters whose ballots had missing or irregular signatures, in compliance with RCW 29A.60.165(1) and (2)(a). (Counsel for Defendant Michele Jaderlund, the Grant County Auditor, is in the process of obtaining a declaration of compliance with this requirement from the Auditor's Office.)

NO. 17-2-00228-0
STIPULATION
Page 1 of 3

AHREND LAW FIRM PLLC
100 E. Broadway Ave.
Moses Lake, WA 98837
(509) 764-9000 • (509) 464-6290 Fax

1 2. It is stipulated that the Grant County Auditor did not attempt to notify by
2 telephone voters who did not respond to the letter sent to them, contrary to RCW
3 29A.60.165(1) and (2)(a).

4 3. It is stipulated that, in the future, the Grant County Auditor will attempt to
5 notify by telephone voters who do not respond to the letter sent to them in compliance
6 with RCW 29A.60.165(1) and (2)(a), and no injunction requiring compliance with the
7 statute is necessary.

8 4. It is stipulated that it would not be appropriate to speculate or attempt to
9 determine how the results of the election would have been different if the Grant County
10 Auditor had attempted to notify voters by telephone in this case, nor would it be
11 appropriate to open the secret ballots that were not counted, nor would it be appropriate
12 to conduct discovery regarding how the voters whose ballots were not counted actually
13 voted.

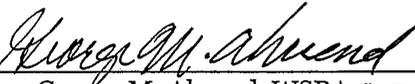
14 5. It is stipulated that RCW 29A.68.110, regarding the effect of "illegal votes" on
15 the result of an election is inapplicable. *See* RCW 29A.68.020(5) (defining "illegal
16 votes").

17 6. It is stipulated that the Court may address the issues presented by the election
18 contest petition in a manner akin to summary judgment under CR 56, either at the
19 hearing scheduled for Monday, March 20, 2017, at 3:00 p.m., or at a subsequently
20 scheduled hearing, with or without the benefit of additional briefing.

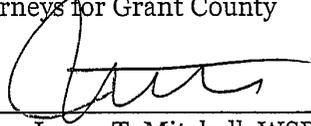
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

DATED March 15, 2017.

AHREND LAW FIRM PLLC
Attorneys for Petitioners

By: 
George M. Ahrend, WSBA #25160

GRANT COUNTY PROSECUTING ATTORNEY
Attorneys for Grant County

By: 
James T. Mitchell, WSBA #31031
Deputy Prosecuting Attorney

AHREND LAW FIRM PLLC

May 22, 2017 - 4:18 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35174-2
Appellate Court Case Title: Fred Meise, et al v. Michele Jaderlund, Grant County Auditor
Superior Court Case Number: 17-2-00228-0

The following documents have been uploaded:

- 351742_Briefs_20170522161717D3277528_4813.pdf
This File Contains:
Briefs - Petitioners
The Original File Name was 2017-05-22 Appellants Brief.pdf

A copy of the uploaded files will be sent to:

- gdano@grantcountywa.gov
- scanet@ahrendlaw.com
- mitchell7151@yahoo.com
- jmoberg@jmlawps.com
- gahrend@ahrendlaw.com
- scanet@ahrendlaw.com
- jtmitchell@grantcountywa.gov
- mrathbone@jmlawps.com
- lee.marchisio@foster.com
- ahearne@foster.com

Comments:

Sender Name: George Ahrend - Email: gahrend@ahrendlaw.com
Address:
100 E BROADWAY AVE
MOSES LAKE, WA, 98837-1740
Phone: 509-764-9000

Note: The Filing Id is 20170522161717D3277528