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~~No. 88574-5~~

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,
AND THE STATE OF WASHINGTON,

Respondents.

and

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

Necessary Parties.

APPELLANTS' BRIEF

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 ORIGINAL

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I. INTRODUCTION

Appellants Michael Carlson, Jerrold R. Gonce, Jeffrey Bossler, Greg Ayers, Richard Peterson, and Marc Forlenza, seek review pursuant to RAP 4.2(a) of the final order of Skagit County Superior Court dated March 15, 2013. That order denied Appellants' Motion for Summary Judgment and granted Respondents' Cross Motion. Appellants contend that the trial court's decision fails to protect Appellants' constitutional rights, upholds a constitutionally infirm statutory scheme, and undermines the most basic principles of our democratic republic.

Appellants challenged the effect of the November 2012 passage of Proposition 1, which amended the San Juan County Charter as well as challenged its underlying statutory authorization (RCW §§ 36.32.020 and .040) as being unconstitutional under various provisions of both the Washington State and U.S. Constitutions. Appellants also challenged the form of the ballot titles of all the Propositions¹ on the November ballot as violative of "single-subject" and "subject-in-title" rules expressed in both

¹While Appellants have not advanced their objections to Propositions 2 and 3 in the instant briefing, Appellants remind the Court that many of the changes contemplated in the text of Propositions 2 and 3 were identical to the changes contemplated in Proposition 1 making anyone who did not vote for or against all three propositions effectively cast a conflicting vote.

the Washington State Constitution (Article II, Section 19) and San Juan County Charter (SJC Charter § 8.31(3) (CP 000581).

The Honorable John M. Meyer ruled, without citation, that Appellants were essentially asking the court to determine the appropriate number of County Council members. Appellants are not, and were not, concerned with the *number* of County Council members. Rather the gravamen of Appellants' complaint is that the *grossly unequal districts* that resulted from the passage of Proposition 1 frustrate their rights to proportional representation and equal access to government.

As for the sufficiency of the ballot title, the Superior Court ruled that Article 2, Section 19 (the one-subject rule) of the Washington State Constitution does not apply to local measures.

As to the constitutional effects of Proposition 1's passage, the lower court ruled that the challenged state statutes (RCW §§ 36.32.020 and .040) do not apply to San Juan County despite the fact that San Juan County is the *only* county in the State of Washington to which these statutes can apply and, therefore, where unequally sized districts can occur.

Judge Meyer also held that Proposition 1 did not violate equal protection nor did Proposition 1 create a scheme that violates Article 1,

Section 12 of the Washington State Constitution because no one has been denied the right to be a candidate or cast a vote.

II. ASSIGNMENTS OF ERROR/ISSUES

A. The Trial Court erred by concluding that Charter Counties are Beyond the Reach of the One-Subject Rule.

1. Does Article II, Section 19 of the Washington Constitution (one-subject rule) apply to County charter amendments?
2. Did the ballot title of Proposition 1 violate this provision?
3. Even if inapplicable, does San Juan County Charter, Section 8.31(3) require that the ballot measures be such that only one subject is included in each measure?

B. The Trial Court erred by concluding that Charter Counties are not governed by RCW 36.32.020, .040.

1. Does RCW § 36.32.020 and paragraph two of RCW § 36.32.040 apply to San Juan County, a home-rule charter county?
2. If so, does the application of the statute as vitiated by the passage of Proposition 1 violate Appellants' substantive due process rights and/or equal protection under the U.S. and Washington State Constitutions?

C. The Trial Court erred by not invalidating the challenged law and ballot measure on constitutional grounds.

1. Does the scheme contemplated by Proposition 1 and authorized by RCW §§ 36.32.020 and .040 violate Appellants' rights under Article I, Section 12 (privileges and immunities clause) of the Washington Constitution?
2. Does the unequal districting scheme created by Proposition 1 and as authorized by RCW §§ 36.32.020 and .040 violate Appellants'

rights under Article 1, Section 19 of the Washington State Constitution which guarantees that all elections shall be free and equal?

III. STATEMENT OF THE CASE

Since January 9, 2006, San Juan County has operated as a Home Rule Charter County. Its original Charter prescribed that a council of six perform the legislative function of the County. SJC Charter, § 2.10 (CP 000564). Under the 2005 Charter each of six council members was nominated and selected separately by the voters who resided in each of six individual districts. SJC Charter, § 4.30 (CP 000572).

It was explicitly contemplated and ratified that proportional representation was of utmost importance. Specifically, in the 2005 Charter, section 4.30(1)(a) promised its citizens that “[t]he districts shall consist of nearly equal populations using the criteria of RCW 29A.76.010.” SJC Charter, § 4.30(1)(a) (CP 000572).

RCW § 29A.76.010 states in relevant part:

“Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.”

RCW § 29A.76.010 (Underline added).

Accordingly, since becoming a Charter County in 2006, the legislative body of San Juan County was comprised of six county council

members representing six more-or-less equally populated residency districts. *See*, SJC Charter, § 4.30 (CP 000572).

As is periodically required, the citizens of San Juan County elected members to a Charter Review Commission (“CRC”) “to determine [the Charter’s] adequacy and suitability to the needs of the county.” SJC Charter, §§ 8.10, .11, .20 (CP 000580). Such a review was recently undertaken and resulted in CRC Propositions 1, 2, and 3, which were all submitted for approval by the voters on November 6, 2012. All three propositions passed.

On November 6, 2012, the voters of San Juan County elected three new legislative representatives, who took office January 1, 2013. They joined three continuing council members whose terms, but-for Proposition 1, were to expire in 2014. Because of Proposition 1, yet another election was held on April 23, 2013, which resulted in the termination of six positions and the elections of three.

On May 13, 2013 the three, newly elected County Council members took office. And although the instant action began with three original plaintiffs (Michael Carlson, Jerrold Gonce, and Jeffrey Bossler), they have since been joined by a former County Council candidate (Greg Ayers), along with two County Council members who lost their seats (Richard Peterson and Marc Forlenza) all of whom were deemed

necessary parties by the trial court upon Respondent County's motion. These additional parties subsequently elected to join as plaintiffs to this action.

At the core of this case is the validity of the Charter Propositions – which drastically altered the Home Rule form of government passed into law by the voters in 2005. Of particular import at this juncture is “Proposition 1,” which reduced the number of council members from six to three *and* allowed for three, grossly unequal districts within the County.

Appellants urge the Court to scrutinize the detailed election returns by district, which highlights just how patently undemocratic (and self-serving to the advantaged Lopez/Shaw district) the result of Proposition 1 is. The total number of votes from the combined six districts (which is to say, countywide) to approve Proposition 1 was 5495 and to reject was 4503. (CP 000908). So, overall Proposition 1 was approved in the fall of 2012 by 992 votes. Remarkably, during that same fall election, the voters replaced two of six incumbents, and three new councilmen were elected to serve four-year terms, which, much to their dismay, were abruptly terminated four months later.

The discrepancy of results based on geography was telling and indicates irrefutably that voters from the future Lopez/Shaw district effectively “bootstrapped” themselves into obtaining greater political

power. It is undisputed that had it not been for the numerical landslide in the Lopez/Shaw precinct, that Proposition 1 would have failed.

From precincts that would comprise the larger resulting districts of San Juan Island and Orcas Island, Proposition 1 was defeated by a vote of 3969 to 4118. (CP 000926). But, from precincts that would comprise the new Lopez/Shaw District, Proposition 1 was approved by a vote of 1516 to 385; a whopping margin of 1131. (CP 000926). This statistic is simply astounding when it is considered that the resulting Lopez/Shaw District constitutes just one-sixth of the County's population.

If all three districts were equal, each would have roughly 5250 in population and 4000 registered voters. The three resulting new districts, however, are not equal:

- District 1: San Juan Island and 15 neighboring islands (population 7,662; registered voters: 5,831);
- District 2: Orcas Island and 28 neighboring islands (population 5,387; registered voters 3,958);
- District 3: Lopez/Shaw Islands and 19 neighboring islands (population 2,720; registered voters 2,222).

(CP 000981).

Another way of thinking about this is that under the new districting scheme, for every one voter in District 3 there are 2.65 voters in District 1 and 1.8 registered voters in District 2. Looked at another way, with the

passage of Proposition 1, the randomly selected person from Lopez/Shaw has a 2.65 times greater chance of winding up on the County council than his fellow citizen from San Juan Island; and a 1.8 times better chance than his counterpart on Orcas. This is not proportional representation, nor is it proportional access to government.

IV. ARGUMENT

Since the inception of this controversy, Appellants' arguments have followed two general tracks. First, Appellants objected to the form of the ballot title and demonstrated that the ballot title was (both constitutionally and statutorily) ineffective to apprise voters as to the content of the proposed modifications. Second, Appellants argued that the effect of the passage of Proposition 1 resulted in the substantive deprivation of constitutionally protected rights to free elections, due process, equal protection and rights conferred by the privileges and immunities clause.

A. HOME RULE COUNTIES ARE NOT BEYOND THE REACH OF THE ONE-SUBJECT RULE.

1. **The Single Subject Rule is Mandated by the Washington State Constitution.**

Article II, Section 19, of the Washington State Constitution reads, in part, as follows:

“[n]o bill shall embrace more than one subject, and that shall be expressed in the title.”

Wash. Const. Art. II, Sec. 19 (emphasis added). It has been held that this Constitutional provision contains two prohibitions: (1) no bill shall embrace more than one subject (single-subject rule), and (2) that subject shall be expressed in the title of the bill (subject-in-title rule). *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 23, 200 P.2d 467 (1948).

Three purposes have been identified for this constitutional mandate: (1) to protect and enlighten the members of the legislature against provisions in bills of which the titles give no intimation; (2) to apprise the people, through such publication of legislative proceedings as is usually made, concerning the subjects of legislation that are being considered; and (3) to prevent hodge-podge or log-rolling legislation. *Id.* at. 24. When laws are enacted in violation of this constitutional mandate, courts will not hesitate to declare them void. *Id.*

Enactments by the people, as with legislative enactments, may be the product of “logrolling”. This occurs when the legislative act contains provisions that are not revealed to the voter who just reads the title of the measure. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 567, 901 P.2d 1028 (1995). Article II, Section 19 is violated, and logrolling occurs, when the measure is drafted such that voters may be

required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 212, 11 P.3d 762 (2000). Appellants contend that Proposition 1, placed on the ballot of the San Juan County election of November 2012, violated the one subject rule and was constitutionally flawed.

Justice Rosellini forcefully noted in *Fritz v. Gorton*, 83 Wn.2d 275, 333, 517 P.2d 911 (1974), that logrolling presents an even greater danger when the legislative act is to be ratified by popular vote:

What is to prevent an individual or a group from including mildly objectionable legislation—that is, legislation which might benefit a small group and is mildly disfavored by the electorate as a whole—in an initiative measure which includes other legislation which has great popular appeal? In the legislature the committee process assures that such a provision will be detected; the amendment process provides the remedy. The legislature can delete parts of a proposal it disfavors; the electorate is faced with a Hobson's choice: reject what it likes or adopt what it dislikes. Only article 2, section 19, preserves the integrity of the initiative process.

Id. at 944.

In the present case, the lower court's investigation into the ballot language was only cursory since it made the threshold determination that Article 2, Section 19, “*applies only to the State Legislative process and not to local measures.*” Meyer's February 26, 2013 Letter Ruling, at 2. This is erroneous.

The principle behind Article II, Section 19 is at the very core of democratic fairness. It is a principle that should be embraced in all legislative circumstances. Because the lower court erred in this threshold matter, the merits of Appellants' claims as to the insufficiency of the title were not fully analyzed or reviewed by the trial court below.

In Washington, citizens have reserved to themselves the right to create the organic law of counties. Wash. Const. Art XI, Sec. 4. However, becoming a Home Rule Charter County does not absolve the local electorate of the requirement to adhere to basic constitutional principles. In fact, such is specifically mandated by Article XI, Section 4 which states: "*Any county may frame a "Home Rule" charter for its own government **subject to the Constitution and laws of this state.** . . .*" Wash. Const. Art XI, Sec. 4 (emphasis added).

The right to create a Charter is of the same par as the right of the legislature to determine the laws affecting non-charter counties. It is a legislative act of equal constitutional import. As this Court has recognized Article II, Section 19 unquestionably applies both to "legislative acts" done by conventional legislation AND initiatives, it is therefore clear that the modern view as to Section 19's application would include voter approved charter amendments. *See, Washington Federation of State Employees v. State*, 127 Wn. 2d at 548 (1995). Indeed the

principle must extend to the current situation, otherwise the result would be an aberration — that organic law created by a voter approved proposition would escape a constitutional requirement that clearly applies to other forms of more traditional legislative enactments — this cannot be so.

While this is apparently a question of first impression, inspection of the rationale in *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 149 P.3d 616 (2006), sheds light on the constitutional power and limits of public initiatives and referenda. In *1000 Friends*, the issue was whether Washington's Growth Management Act is subject to local referenda. *1000 Friends*, 159 Wn.2d at 188. Holding that local referenda could not be used to invalidate local ordinances enacted pursuant to the GMA, the Court stated:

“A general law enacted by the legislature is superior to, and supersedes, all charter provisions inconsistent therewith. Any charter provision, therefore, which has the effect of limiting or restricting a legislative grant of power to the legislative authority or other officer of a city is invalid.”

1000 Friends of Washington v. McFarland, 159 Wn.2d 165, 173-74, 149 P.3d 616, 621 (2006), (quoting *Neils v. City of Seattle*, 185 Wn. 269, 276, 53 P.2d 848 (1936)).

Here, it is axiomatic that the legislative authority to create a county charter is of constitutional origin. Given that the legislature would

certainly have been confined by the requirements of Article II, Section 19 were they enacting laws of general applicability to county governmental structure, it would be wholly incongruous were voter ratified charter amendments not subject to that same constitutional safeguard.

Unlike what the Respondents would have this Court believe, Appellants are not arguing that ALL county ordinances are subject to Article II, Section 19, but only to those that enact, repeal or modify a County's organic law — the basic framework of government, that otherwise would be enacted by the Washington State Legislature — should be subject to the full protection of Article II, Section 19.

Taking the case at hand, the ballot title of Proposition 1 reads as follows:

Concerns Charter amendments to reduce the number of Council members from 6 to 3.

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.

(CP 000029).

Proposition 1's ballot title only puts the voter on notice of two limited subjects: 1) a proposed reduction in the number of seats on the Council from 6 to 3; and, 2) voting would be county-wide. The title of Proposition 1 makes *no mention whatsoever* that the resulting districts would be of grossly unequal size, despite that this was explicitly guaranteed by the 2005 Charter. (CP 000774, 000572).

Moreover, the Explanatory Statement prepared by San Juan County Prosecuting Attorney and presented to voters in the Voters' Pamphlet made no reference to the fact that the resulting districts would be of three vastly different sizes. (CP 000872).

While the last sentence in the title, refers to "technical revisions and clarifications to the charter" it is impossible to conclude that a wholesale abandonment of proportional districting can be described as a mere "technical revision." (*See*, CP 000029). Nor is it possible to conclude that the abandonment of proportional districting was merely "clarification." Moreover, the last clause referring to a transition plan is quite specific and therefore imparts the sense that the "technical revisions" and "clarifications" would be limited to those bearing on the topics of reduction of council seats and county-wide voting, NOT the wholesale repudiation of the proportional districting guaranteed by the 2005 Charter and Washington law, generally.

Failure to include any language that notifies voters that future districts would be disproportionate constitutes logrolling. The inclusion of non-related material items into the fine print of the CRC Propositions is constitutionally impermissible.

Inspection of the complete text of Proposition 1 which was published in the Voters' Pamphlet shows that numerous wholly unrelated amendments were proposed to the County Charter which in no way relate to the reduction of the number of Council Members from 6 to 3, nor county-wide voting:

- § 1.40 amends how the county boundaries are defined;
- § 3.20 changes the powers and duties of executive officers;
- § 4.10 changes how the Prosecuting Attorney is to be elected;
- § 4.20 changes the residency qualifications for running for candidacy;
- § 4.30 and § 4.34 redistrict the 6 residency districts into 3, AND alter the way in which districts are redrawn, AND eliminates the requirement that all districts shall be “comprise[d] as nearly as possible, equal populations” (Citing RCW 36.32.020).
- §4.31 changes the terms of the legislative body;
- §4.32 changes the County from a district-wide to a county-wide nomination scheme;
- §4.33 changes the election from district-wide voting to county-wide voting;

- § 4.70 alters the commencement date of terms of office;
- § 8.20 changes how the county charter can be amended;
- § 8.21 changes the rules regarding what constitutes abdication of office by a charter review committee member and how the resulting vacancy is filled;
- §8.31 changes the way multiple ballot measures are to be handled.²

(CP 000872 – 000881).

Appellants urge the Court to recognize that at the very minimum the changes contemplated in sections 8.21 and 8.31 alter the rules relating to the very core of self-governance. (CP 000581). These sections alter the rights and duties of the Charter Review Commission and the members that sit thereon. *Id.* This is THE institution responsible for the generation of the County’s organic law. It is Appellants’ position that amendment to the rules regarding such a fundamental and basic institution cannot be “slipped in” as a collateral or incidental change.

2. The Single Subject Rule is also Mandated by the former and then operative San Juan County Charter.

² This section removes the very requirement from the 2005 Charter that forms the independent non-constitutional ground discussed *infra*.

Even were it determined that Article II, Section 19 is inapplicable, San Juan County's own version of the "subject in title" rule certainly does apply and therefore supplies an independent basis for the Proposition's invalidity. Section 8.31(3) of the Charter formerly stated in relevant part:

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. (CP 000622).

After modification the Charter's single-subject rule expressed in Section 8.31 now reads:

In submitting any amendment to 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 subject proposition even though it is composed of changes to one or more Articles. (CP 000555).

The Declaration of former freeholder Charles Bodenstab clarifies that this provision was added to the original Charter for a good reason: to prevent the exact thing attempted by the CRC with the submission of the three Propositions: logrolling. (CP 000467). The voters of San Juan County deserve to know precisely what they are voting for and deserve an opportunity to cast a vote for or against each separate subject. Voters must be appropriately apprised of the changes to be made to their Charter. The inclusion of subjects not revealed in the title -- particularly the dramatic

change in the access one is afforded to government – is an affront to the good, commonsense, democratic purpose of the single-subject rule explicitly articulated in original Charter Section 8.31.

B. CHARTER COUNTIES ARE SUBJECT TO §36.32.020/040

It was error for the lower court to conclude: “*San Juan County has a Home Rule Charter, so the statutes thought to be applicable [RCW 36.32.020., 040] are irrelevant. The State really has nothing to say about how San Juan County created its Charter.*” Judge Meyer’s February 26, 2013 Letter Ruling, at 3.

Throughout this case, the State of Washington has contended that because San Juan County is a charter county, the State cannot be implicated for a constitutional violation as it is the County that ultimately bears responsibility for the laws regarding the structure of its government. At the same time, however, the County points to the state statutes as authority for the current scheme. (CP 000547, 000548).

Given the County's reliance on state statutes which ONLY can apply to San Juan County, Appellants argue that it would be the worst sort of legalistic formalism and tautological for the statutes to escape judicial scrutiny on this basis.

San Juan County 2005 Charter Sections 4.30 and 4.32 *cite by number* to RCW § 36.32.020 and RCW § 36.32.040. (CP 000614). It is these citations to state statutes that purportedly enable San Juan County to stray from the usual rule that districts be equally populated. The constitutional infirmity of these statutes is part and parcel of the charter amendments, which rely on them and are likewise constitutionally infirm.

1. Equal Protection Implications.

a. The History behind RCW §§ 36.32.020 and .040.

The Washington State legislature has historically required Counties to be divided into three equal districts. *See*, RCW § 36.32.020. However, RCW § 36.32.020 allows a county composed entirely of islands to divide their county into districts without regard to population. RCW § 36.32.020 now reads in relevant part:

The board of county commissioners of each county shall divide their county into three commissioner districts so that each district shall comprise as nearly as possible one-third of the population of the county: PROVIDED, that the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts.

However, the commissioners of any county composed entirely of islands and with a population of less than thirty-five thousand may divide their county into three commissioner districts without regard to population, except that if any 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.

While initially, Island County was also covered by the second paragraph, its population has since surpassed thirty-five thousand people. Now, San Juan County is the only county in the state of Washington comprised entirely of islands with a population of less than thirty-five

thousand and accordingly the only county in the state subject to RCW § 36.32.020.

RCW § 36.32.040 requires that representatives from each district be elected only by the qualified electors in their own district, but provides an exception which applies solely to San Juan County. The relevant paragraph reads:

(2) Where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects.

RCW § 36.32.040.

b. The Saga of *Story v. Anderson*.

By far, the most analogous case to the present matter is the fascinating case which culminated in *Story v. Anderson*, 93 Wn.2d 546, 611 P.2d 764 (1980). *Story* is highly informative because it addresses the viability of the very Washington statutes that allow the unequal districting now under review, RCW § 36.32.020 and § 36.32.040. In *Story*, Superior Court Judge Howard A. Patrick had issued a writ of mandamus ordering

Island County to be divided into three equal districts. In the initial Supreme Court opinion, the justices ruled 5-4 that the unequal districting scheme was constitutional, *Story v. Anderson*, 91 Wn.2d 667, 588 P.2d 1179 (1979), then on a Motion to Reconsider, the Washington State Supreme Court reversed itself and ruled 6-3 that the unequal districting scheme violated the equal protection clause and was therefore unconstitutional. *Story v. Anderson*, 93 Wn.2d 546, 555, 611 P.2d 764 (1980).

In *Story*, the Washington Supreme Court identified two requirements essential for establishment of valid voting districts: (1) the districts must have “substantial equality of population” to insure the vote of any citizen is “approximately equal in weight to that of any other citizen in the State” (quoting *Reynolds v. Sims*, 377 U.S. at 579, 84 S. Ct. at 1390); and (2) the districts must not be drawn to dilute the voting strength of any citizen (particularly of any racial or political groups). *Story*, 93 Wn.2d at 549 (emphasis added).

c. Post *Story v. Anderson*.

That this statute is constitutional is further called into question by a 1983 Amendment to the Washington Constitution (three years post-*Story*) where Washington citizens again reaffirmed the fundamental importance of equally sized districts by passing Amendment 74 to the Constitution.

The amendment — now Art II, Section 43 — states in relevant part:

Each district shall contain a population, excluding nonresident military personnel, *as nearly equal as practicable to the population of any other district*. To the extent reasonable, each district shall contain contiguous territory, shall be compact and convenient, and shall be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries. The commission's plan shall not provide for a number of legislative districts different than that established by the legislature. The commission's plan *shall not be drawn purposely to favor or discriminate against any political party or group*.

Wash. Const. Art. 2, Sec. 43(5) (emphasis added).

2. Substantive Due Process Violations.

Both the United States and Washington Constitutions prohibit the state from denying any person “due process of law.” U.S. Const. Amend. XIV, § 1; Wash. Const. Art. I, Sec. 3. Substantive due process protects against arbitrary and capricious government action even if the decision to take such action is procedurally sound. *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 218-219, 143 P.3d 571 (2006). The Washington Supreme Court has provided a three-prong test to determine whether a regulation violates substantive due process:

- (1) Whether the regulation is aimed at achieving a legitimate public purpose;

(2) Whether it uses means that are reasonably necessary to achieve that purpose; and

(3) Whether it is unduly oppressive”

Presbytery of Seattle v. King County, 114 Wn.2d 320, 330, 787 P.2d 907 (1990).

There is absolutely no legitimate purpose advanced by either the state or the county to substantiate the continued existence of the special provisions which apply only to San Juan County and its citizens. The fact that Appellants have the burden of proof does not trump the fact that there is no legitimate public purpose for these laws. The question for prong one becomes does the exception created for island counties in RCW § 36.32.020 and RCW § 36.32.040 solve a problem? Appellants contend that there is no problem to be cured.

The second prong of the substantive due process test essentially asks whether the regulation tends to solve the problem identified in prong number one. Often this analysis hinges on the result of the third prong’s results. *See, Guimont v. Clarke*, 121 Wn.2d 586, 610, 854 P.2d 1 (1993). The County may argue that counties comprised only of islands and consisting of smaller relative populations have difficulties or challenges with a representative system that has three separate districts comprised of

as nearly as possible one-third of the population of the county, but that has been disproven by history.

In determining the third prong of the test, the court must engage in a balancing of the public's interests against the burdens created for those being regulated. *Presbytery*, 114 Wn.2d at 331. That portion of Proposition 1 which reverts San Juan County to grossly unequal districting and purports to exempt San Juan County from the traditional scheme of representation allegedly because of its geographical idiosyncrasies limits the rights of certain voters (the County's more conservative minority) as well as potential candidates for office. RCW § 36.32.020 subjects the county's minority voters to the whims of the majority, and therefore is unduly oppressive.

The apparent allowance of unequal districts under state law is really an aberration of history premised on outmoded concepts of communication. Moreover, since San Juan County has (until the passage of Proposition 1) operated with equal districting, it is impossible to say that unequal districts are a "narrowly tailored" imposition that can withstand constitutional scrutiny. And thus, the challenged sections of RCW §§ 36.32.020, .040 should be stricken as a violation of substantive due process.

C. **PROPOSITION 1 CAUSED DISPARATE DISTRICTING AND VIOLATES FUNDAMENTAL CONSTITUTIONAL PRINCIPLES.**

1. Standard of Review

Since the right to vote is a fundamental right, the appropriate level of review for any infringement of that right is strict scrutiny. The right of all constitutionally qualified citizens to vote is fundamental to our representative form of government. In most instances any legislative act that qualifies this right must, under federal law, be based upon a compelling state interest and the state must demonstrate that no less restrictive measures are available to achieve this interest. *Foster v. Sunnyside Valley Irrigation Distribution*, 102 Wn.2d 395, 687 P.2d 841 (1984).

2. Article I, Section 19.

In *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998) the Washington State Supreme Court explained that in Washington, “The right to vote is fundamental, and Art I, § 19 *provides greater protection for a free and equal vote than does the federal constitution's one person-one vote equal protection right.* *Id.* at 56, (citing *Foster v. Sunnyside Valley Irrig. Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984) (emphasis added). Accordingly, it is under this more

expansive protection (as articulated by the Washington courts) that Appellants' claims must be assessed.

The weight of a citizen's vote cannot be made to depend on where that citizen lives and the one-person, one-vote principle requires population equality in order to “insure, as far as is practicable, that equal numbers of voters can vote for proportionately equal numbers of officials.” *Snyder v. Munro*, 106 Wn.2d 380, 386, 721 P.2d 962 (1986) (citing *Story*, 93 Wn. at 550 (quoting *Hadley v. Junior College Dist.*, 397 U.S. 50, 56, 90 S.Ct. 791, 795, 25 L.Ed.2d 45 (1970))).

Grossly disproportionate districts violate Washington's guarantee of “free and equal” elections. Article 1, Section 19 of the Washington State constitution proclaims: “*All elections shall be free and equal*, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Wash. Const. Art I, Sec. 19. Though not explicitly articulated in the federal constitution, the United States Supreme Court declared in *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 736-37 (1964) that “[a]n individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection

Clause. . . . A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be.” *Id.* at 736.

In *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 397-411, 687 P.2d 841, 842-50 (1984) the Washington State Supreme Court had an opportunity to examine the meaning of Article 1, Section 19. At issue was whether a voting scheme that excluded some residential landowners’ votes in a water district election, as they only gave the right to vote to owners of tracts of ten acres or more. *Foster*, 102 Wn.2d at 403. Looking to the intent of the framers, the Supreme Court examined the debate on Section 19 at the Washington State Constitutional Convention:

The guaranty that “all Elections shall be free and equal” was adopted from the Oregon constitution, which was, in turn, adopted from the Indiana constitution. *The Journal of the Washington State Constitutional Convention, 1889*, at 508 n.31 (B. Rosenow ed. 1962). The framers of the Washington Constitution added to this phrase the additional guaranty that “no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” **At the convention, there were two motions to replace the word “equal” with an alternative word. Mr. Dyer moved to substitute “open” for “equal.” Mr. Reed moved to substitute “impartial” for “equal.” Mr. Lindsley moved to strike the entire section. Each of these motions failed.** At least one delegate, Mr. Moore, believed that “equal” meant the same thing as “free.” *Journal, supra* at 508.

Foster, 102 Wn.2d at 405 (emphasis added). The *Foster* Court expressly limited the circumstances as to where the deviation from the strict mandate of one-person-one-vote can occur, writing:

The United States Supreme Court has departed from the strict one-person, one-vote rule of *Reynolds v. Sims, supra*, where the election of representatives in special purpose municipal districts is concerned. See *Salyer Land Co. v. Tulare Lk. Basin Water Storage Dist.*, 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed.2d 659 (1973); *Ball v. James*, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed.2d 150 (1981). ***This is due to the limited governmental powers possessed and exercised by these districts and the disproportionate impact such districts frequently have upon a definable class living within their boundaries.***

Foster, 102 Wn.2d at 408 (emphasis added). In other words, Washington has only recognized the legitimate departure from the strict one-person, one-vote precept where the election concerns a governmental entity like power generation, drainage, or fire districts; entities of specialized and limited governmental powers. Appellants cannot find, nor have Respondents supplied, a single Washington case where unequal districting of a general municipal jurisdiction has survived constitutional scrutiny.

Respondents would have us read the *Story* decision as saying that district wide primaries serve to sanitize unequal districts. This is incorrect. “***All procedures*** used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote.” *Moore v. Ogilvie*, 394 U.S. 814, 818 (1969). In the present case discrimination takes two forms. In the first, there is discriminatory impact between residents of San Juan County. And

in the second, there is discriminatory impact between all residents of San Juan County and all other citizens of the State of Washington.

3. Article I, Section 12

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.

Wash. Const. Art. I, Sec. 12.

a. Intra-County Disparity

The County has vigorously argued that a candidate from a smaller populated residency district has the same chance of being elected as a candidate from a residency district with a larger population. This is not true.

A simple mathematical demonstration will show how Respondent's theory is flawed. Suppose there is a county with 300 registered voters divided into perfectly equal districts of 100 persons each. *Ceteris Paribus*, every person for every district would have a 1 in 100 chance of serving on County Council. This is the platonic perfection for which the Washington Constitution strives.

Now suppose, that districts are redrawn so that there are two districts (A and B) with 125 people, and one district (C) with 50 people. (This, in fact, is roughly what has occurred with the passage of Proposition

1). The citizen from A or B now has only a 1 in 125 chance of serving, where the citizen from C has a 1 in 50 chance of serving. The fact that all 300 citizens can now vote for all candidates in no way sanitizes the enormous disparity of the access afforded the citizens in district C at the expense of citizens from A or B.

This is not merely theoretically troubling. Proposition 1 has already impaired the political machinery designed for fairness, transparency, and good governance. The Court need look no further than the San Juan County primary held this past spring of 2013 to see that these ill-effects have, in fact, already occurred. What follows, precisely demonstrates how the current scheme in San Juan County impairs the democratic process.

Because the Lopez/Shaw district is much less populated there was (and is) much less of a chance that a primary would be triggered. This produces two rather undemocratic results. First, the Lopezian has a much greater chance of waltzing onto the ballot for the general election. Second, all citizens of the county are denied having an equal chance of vetting all candidates in the primary process.

Fundamentally, primaries play a much more important role in a county comprised entirely of islands. Because of geography, citizens in San Juan County are much less able to observe citizens on other islands.

We do not see each other at the grocery store, our kids do not go to school together, and although we are bound together by our government, we are parted by the Salish Sea. San Juan County is uniquely hindered by its geography and the result is informational asymmetry.

Because of population disparities, the large districts of San Juan Island and Orcas Island are more likely to have a sufficient number of candidates file to trigger a primary. It is ironic, and perhaps a bit Orwellian, that the primary, an institution of transparency, is now less likely to occur (and indeed did not occur this past spring) in the smaller district whose candidate pool is least available for observation by voters in other districts.

It is the Appellants' position that the vetting process of the primary is hugely important and the opportunity of having a primary election is important enough that it should not be apportioned to some districts but not others. Moreover, it must be remembered that, "All procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgement of the right to vote" *Moore v. Ogilvie*, 394 U.S. 814, 818 (1969).

The County's theory, that countywide primaries act to sanitize unequal district sizes, is flawed and has been recognized as an open question by the Supreme Court. In Support of this theory, Respondent County relies on

the federal cases of *Dusch v. Davis*, 387 U.S. 112 (1967) and *Fortson v. Dorsey*, 379 U.S. 433 (1965). And the Washington State Supreme Court has questioned the local applicability of these cases. In the first Washington State Supreme Court decision to be generated by *Story* the Court stated:

Dusch reaffirmed the principle enunciated in Fortson v. Dorsey, 379 U.S. 433, 438, 85 S.Ct. 498, 501, 13 L.Ed.2d 401, 404 (1965), that when an official's "tenure depends upon the county-wide electorate 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." Dallas County v. Reese, supra at 479-80, 95 S.Ct. at 1707.

'As the plan becomes effective, if it then operates to minimize or cancel out the voting strength of racial or political elements of the voting population, it will be time enough to consider whether the system still passes constitutional muster.'

Story v. Anderson, 91 Wn.2d 667, 671-72, 588 P.2d 1179, 1181 (1979).

Accordingly, quite to the contrary of Respondents' position, it is an open question of law as to whether countywide primaries indeed have their alleged sanitizing effect.

b. Inter-County Disparity.

And in yet another capacity, the citizens of San Juan County are being treated differently than all other citizens in the State of Washington. Every other county in the State of Washington is required to abide by the constitutional requirement that voting districts be as equally sized as

possible. RCW § 36.32.020. What is the rationale for treating San Juan County citizens differently than every other citizen in the state? The fact that San Juan County has operated since 2005 with six equally-sized districts surely frustrates Respondents' argument that unequal districts are somehow necessary and narrowly tailored to fulfill a compelling state interest.

4. Mathematical Disproportionality ≠ Equality.

Inquiry into the mathematical proportionality of districts is probative of Appellants' claims and has been undertaken by federal and state courts when assessing the permissive level of deviation from equal districting. The plain language of both Article 1, § 19 and Article I, S 12 require equality in voting. Equality is not merely measured by mathematical proportionality; equality requires uniformity in district population. The Respondents' reliance on at-large elections as a method to sanitize unequal districting is factually and theoretically wanting. Respondents' argument that at-large elections are a constitutional way of electing local officials because they offer "mathematical perfection" is similarly flawed.

The logic of this argument is not borne out either in theory, or as it has already turned out, in practice. While pure at-large schemes, one

where there are no residency districts (or perfect, equally-sized districts) does achieve “mathematical perfection” we do not have this case here. The Achilles heel of the current scheme is that candidates must reside in their district to be eligible to run for office.

An examination of prior case law reveals that the disparity in this case greatly exceeds disparities that have been struck down as impermissibly large. In *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 84 S. Ct. 1459 (1964), the Court struck down an election scheme with a ratio of 3.6 to 1 and a percentage deviation of 115.44 percent. In *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 84 S.Ct. 1418, 12 L.Ed.2d 568 (1968), the court invalidated an election scheme with a ratio of 2.6 to 1 and percentage deviation of 88 percent.

In *Snyder v. Munro*, 106 Wn.2d 390 (1986), the Washington State Supreme Court had the opportunity to examine the extent and purpose of *Reynolds* and concluded that a state's apportionment plan with a maximum population deviation under ten percent falls into a category of minor deviations “insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment.” *Snyder*, 106 Wn.2d at 384, (citing *Brown v. Thomson*, 462 U.S. 835, 842, 103 S.Ct. 2690, 2696, 77 L.Ed.2d 214 (1983)).

In the case at bar, a citizen from the Lopez/Shaw district is 265 percent *more likely* to serve on the San Juan County Council than his peer living on San Juan Island. Clearly, the districting scheme ushered in by Proposition 1 falls well within the impermissible range as defined by both *Lucas* and *WMCA*.

5. Unequal Districts Frustrate the Cure.

Respondents contend that judicial intervention in the instant controversy is unnecessary because the citizens of San Juan County are free to again amend their charter and return, if desired, to equally-sized districts. This is problematic for at least two reasons.

First, in *Story* it was noted that the very same problems in the scheme that lead to its unconstitutionality also impeded the majority from fully expressing its preferences in selecting commissioners who will change to an equal districting scheme. *Story v. Anderson*, 93 Wn. 2d 546, 554-55, 611 P.2d 764, 769 (1980). Here, fact that Proposition 1 tampers with proportional access to the county council, frustrates the ability to correct the disproportionality in the future because the council is given significant power to adopt or propose alternative initiatives to the County Charter. *See*, Charter §§ 6.22(5), 9.34(1) (CP 000550, 000556). SJC Charter section 9.34(1) provides, “[t]he County Council 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.” SJC Charter § 9.34(1) (CP 000556). In essence a key avenue to remedy this inequality through the democratic process has been thwarted. It would be political suicide for a Lopezian Council Member to cede the disproportionate power that Lopez holds.

Second, the seats on governmental committees throughout the County Government are allocated according to district. For just one example, Section 2.20.080 of the San Juan County Code states:

The planning commission shall consist of nine members appointed by the chair of the County council, with approval of a majority of the County council; provided, that each member of the council shall submit to the chair a list of nominees residing in his/her council district and the chair ***shall make his/her appointments from such lists so that as nearly as mathematically possible each council district shall be equally represented on the commission (RCW 36.70.080)***”

SJC County Code § 2.20.080 (emphasis added). The parenthetical citation in the county statute directs us to Washington State’s equivalent statute that tracks essentially the same language.

It therefore seems impossible to reconcile the argument that charter counties can always change back if it is not working for them. Both at the highest legislative levels of the county and through lesser commissions,

the democratic machinery has been altered in such a way as to make going back to the equal districting scheme much more improbable because a disproportionately small district now wields a disproportionate amount of power.

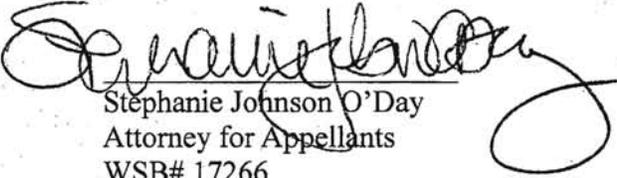
It is with this in mind that Appellants respectfully ask this Court to declare that the unequal districts created by the passage of Proposition 1 be declared unconstitutional. Appellants further ask that the Court rule that the state statutes (RCW §§ 36.32.020, .040) that permit San Juan County alone to deviate from the usual requirement that districts be equally-sized, be declared void as unconstitutional. Appellants' seek a ruling that the ballot title of Proposition 1 be declared either constitutionally insufficient under Article 2, Section 19, Article I, Section 12, or statutorily insufficient pursuant to San Juan County Code Section 8.31.

V. Conclusion

For the foregoing reasons, Proposition 1 should be declared invalid. San Juan County has endured three County Council elections (and one primary) in the past year. The candidates are exhausted and so too is the voting public. Appellants seek a remedy which provides the least disruptive method of returning the county to equally sized districts,

and allows the voters to cast a properly noticed vote on properly framed ballot measures in future elections. It is therefore suggested that for the foregoing reasons this Court declare that Proposition 1 is invalid and that the matter be remanded to the trial court in order to determine an appropriate remedy.

Respectfully submitted this 5th day of June, 2013.


Stephanie Johnson O'Day
Attorney for Appellants
WSB# 17266

APPENDIX EXHIBITS

- A. Article XI, Section 4 Washington State Constitution
Home Rule Charter Authority
- B. RCW 36.32.020/040
- C. 2006-2012 Voting District Map
- D. Section 8.31(3) 2006 San Juan County Charter
- E. November 6, 2012 Official Ballot – ref Propositions 1, 2 and 3
- F. 2013 Residency District Information and District Map

APPENDIX A

HOME RULE CHARTER

Article XI, Section 4 of Washington State Constitution

Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state, and for such purpose the legislative authority of such county may cause an election to be had, at which election there shall be chosen by the qualified voters of said county not less than fifteen (15) nor more than twenty-five (25) freeholders thereof, as determined by the legislative authority...

APPENDIX B

36.32.020. Commissioner districts

The board of county commissioners of each county shall divide their county into three commissioner districts so that each district shall comprise as nearly as possible one-third of the population of the county: PROVIDED, That the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts.

However, the commissioners of any county composed entirely of islands and with a population of less than thirty-five thousand may divide their county into three commissioner districts without regard to population, except that if any single island is included in more than one district, the districts on such island shall comprise, as nearly as possible, equal populations. The lines of the districts shall not be changed oftener than once in four years and only when a full board of commissioners is present. The districts shall be designated as districts numbered one, two and three.

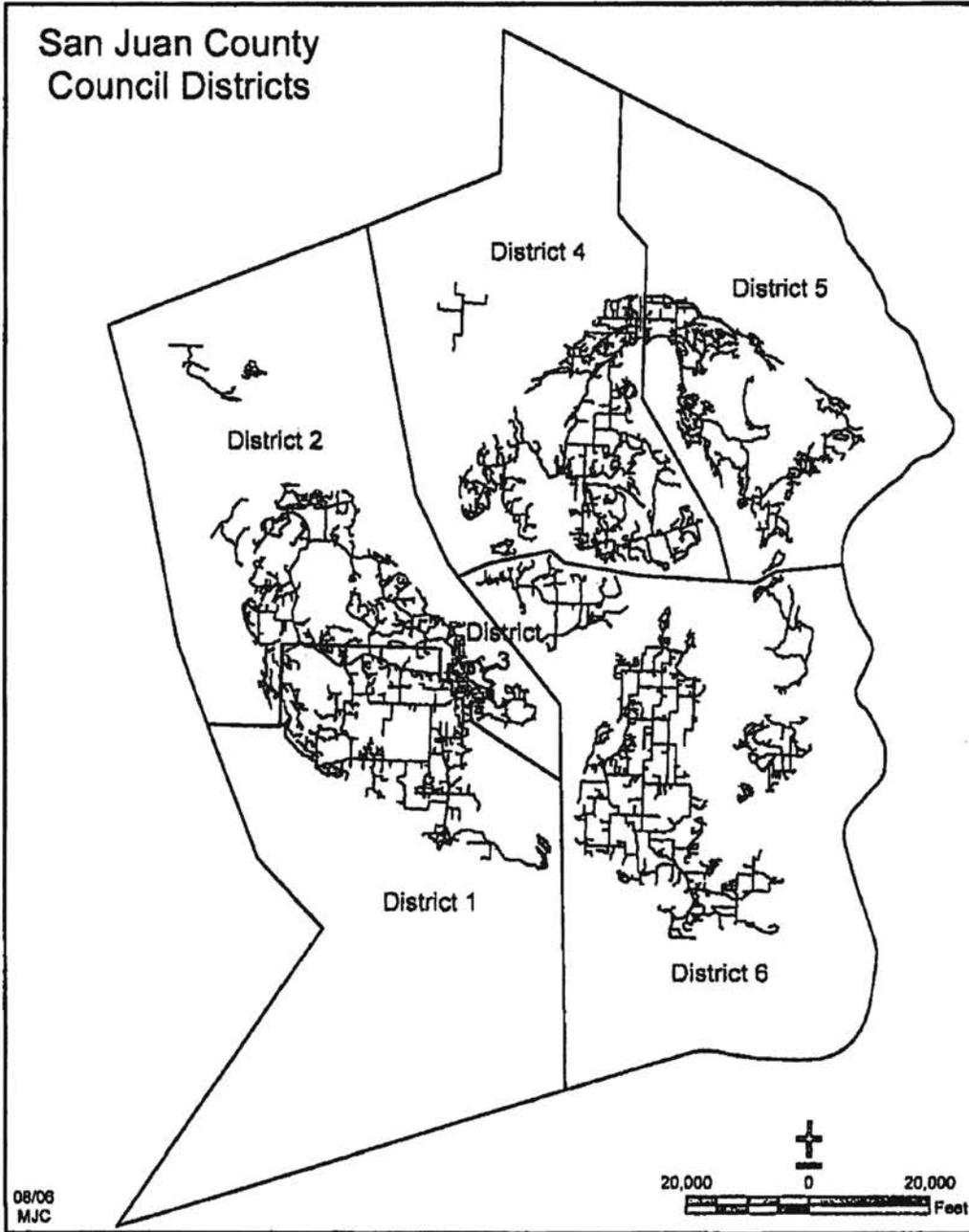
36.32.040. Nomination by districts

(1) Except as provided in subsection (2) of this section, the qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated in all other respects.

(2) Where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election. Such candidates shall be nominated in the same manner as candidates for other county offices are nominated in all other respects.

APPENDIX C

ATTACHMENT D
Map of Existing San Juan County Council Districts



APPENDIX D

2005 Charter

(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.

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 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 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.

(3) If more than one amendment is submitted on the same ballot, they shall be submitted in such a manner that the 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.

(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.

(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 amendment 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 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.

APPENDIX E

Nov 2012

12000010100011

Sample Ballot

12000010100011

OFFICIAL BALLOT San Juan County 2012 General Election November 06, 2012 Use a dark blue or black ink pen to completely fill in the box to the left of your choice. Do not cross pencil. If you make a mistake, draw a line through the entire measure response or candidate's name. You then have the option of making another choice. Optional write-in: To vote for a candidate not listed, fill in the box to the left of "write-in" and print the name on the line. If a primary election was held for an office, the two candidates who received the most votes in the Primary advanced to the General Election. Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. The election for President and Vice President is different. Candidates for President and Vice President are the official nominees of their political party. Start voting here		Proposed to the Legislature and Referred to the People Initiative Measure No. 502 Initiative Measure No. 502 concerns marijuana. This measure would license and regulate marijuana production, distribution, and possession for persons over twenty-one; remove state-law criminal and civil penalties for activities that it authorizes; tax marijuana sales; and earmark marijuana-related revenue. Should this measure be enacted into law? vote for one <input type="checkbox"/> Yes <input type="checkbox"/> No		SAN JUAN COUNTY MEASURES Initiative Measure 2012-4 Concerns prohibitions on the growing of genetically modified organisms Initiative Measure No. 2012-4 concerns the growing of genetically modified organisms in San Juan County. This measure would make it unlawful to propagate, cultivate, raise or grow plants, animals, and other organisms which have been genetically modified and provides for penalties and destruction of such organisms. Should this measure be enacted into law? vote for one <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		FEDERAL RACES PARTISAN OFFICES President/Vice-President of the United States 4 year term - vote for one <input type="checkbox"/> Barack Obama/ Joe Biden Democratic Party Nominees <input type="checkbox"/> Mitt Romney/ Paul Ryan Republican Party Nominees <input type="checkbox"/> Gary Johnson/ James P. Gray Libertarian Party Nominees <input type="checkbox"/> Virgil Goode/ James N. Clymer Constitution Party Nominees <input type="checkbox"/> Jill Stein/ Cheri Honkala Green Party Nominees <input type="checkbox"/> Peta Lindsay/ Yari Osorio Socialism & Liberation Party Nominees <input type="checkbox"/> James Harris/ Alyson Kennedy Socialist Workers Party Nominees <input type="checkbox"/> Ross C. (Rocky) Anderson/ Luis J. Rodriguez Justice Party Nominees <input type="checkbox"/> Write-In	
WASHINGTON STATE MEASURES Proposed by Initiative Petition Initiative Measure No. 1185 Initiative Measure No. 1185 concerns tax and fee increases imposed by state government. This measure would restate existing statutory requirements that legislative actions raising taxes must be approved by two-thirds legislative majorities or receive voter approval, and that new or increased fees require majority legislative approval. Should this measure be enacted into law? vote for one <input type="checkbox"/> Yes <input type="checkbox"/> No		Proposed to the People by the Legislature Amendment to the State Constitution Engrossed Senate Joint Resolution No. 8221 The Legislature has proposed a constitutional amendment on implementing the Commission on State Debt recommendations regarding Washington's debt limit. This amendment would, starting July 1, 2014, phase-down the debt limit percentage in three steps from nine to eight percent and modify the calculation date, calculation period, and the term general state revenues. Should this constitutional amendment be: vote for one <input type="checkbox"/> Approved <input type="checkbox"/> Rejected		San Juan County Proposition No. 1 Concerns charter amendments to reduce the number of County Council members from 9 to 3 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: vote for one <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Rejected		San Juan County Proposition No. 2 Concerns charter amendments regarding County executive and administrative duties The San Juan County Charter Review Commission has proposed amendments to the San Juan County Charter concerning who will perform executive and administrative duties. This measure would remove references to the County Administrator as the chief administrative officer and as part of a separate branch of county government; place with the County Council those administrative and executive powers not granted to other elected officials; and require that the County Council appoint a County Manager to assist the Council in carrying out its duties. This measure also includes technical revisions and clarifications to the charter. Should this proposal be: vote for one <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Rejected	
Initiative Measure No. 1240 Initiative Measure No. 1240 concerns creation of a public charter school system. This measure would authorize up to forty publicly-funded charter schools open to all students, operated through approved, nonreligious, nonprofit organizations, with government oversight, and modify certain laws applicable to them as public schools. Should this measure be enacted into law? vote for one <input type="checkbox"/> Yes <input type="checkbox"/> No		Senate Joint Resolution No. 8223 The Legislature has proposed a constitutional amendment on investments by the University of Washington and Washington State University. This amendment would create an exception to constitutional restrictions on investing public funds by allowing these universities to invest specified public funds as authorized by the legislature, including in private companies or stock. Should this constitutional amendment be: vote for one <input type="checkbox"/> Approved <input type="checkbox"/> Rejected		U.S. Senator 6 year term - vote for one <input type="checkbox"/> Maria Cantwell (Prefers Democratic Party) <input type="checkbox"/> Michael Baumgartner (Prefers Republican Party) <input type="checkbox"/> Write-In			
Passed by the Legislature and Ordered Referred by Petition Referendum Measure No. 74 The legislature passed Engrossed Substitute Senate Bill 8230 concerning marriage for same-sex couples, modified domestic-partnership law, and religious freedom, and voters have filed a sufficient referendum petition on this bill. This bill would allow same-sex couples to marry, pursue domestic partnerships only for services, and preserve the right of clergy or religious organizations to refuse to perform, recognize, or accommodate any marriage ceremony. Should this bill be: vote for one <input type="checkbox"/> Approved <input type="checkbox"/> Rejected		Advisory Vote of the People Advisory Vote No. 1 Engrossed Senate Bill 8835 The legislature affirmed, without a vote of the people, a business and occupation tax deduction for certain financial institutions' interest on residential loans, costing \$170,000,000 in its first ten years, for government spending. This tax increase should be: vote for one <input type="checkbox"/> Repealed <input type="checkbox"/> Maintained		San Juan County Proposition No. 3 Concerns amendment to the charter regarding open public meetings The San Juan County Charter Review Commission has proposed amendments to the San Juan County Charter concerning open public meetings. This measure would add a provision to the County charter to state that all meetings of the County Council and all committees thereof be open to the public except when a private (executive) session or closed session is allowed by law. This measure also includes technical revisions and clarifications to the charter. Should this proposal be: vote for one <input type="checkbox"/> Approved <input type="checkbox"/> Rejected			
		Advisory Vote No. 2 Substitute House Bill 2560 The legislature extended, without a vote of the people, expiration of a tax on possession of petroleum products and reduced the tax rate, costing \$24,000,000, in its first ten years, for government spending. This tax increase should be: vote for one <input type="checkbox"/> Repealed <input type="checkbox"/> Maintained		Congressional District 2 U.S. Representative 2 year term - vote for one <input type="checkbox"/> Rick Larsen (Prefers Democratic Party) <input type="checkbox"/> Dan Matthews (Prefers Republican Party) <input type="checkbox"/> Write-In			
				Continue voting next side			

Sample Ballot

3423031158

00029

APPENDIX F



**Residency
District 2**

**Residency
District 1**

**Residency
District 3**



San Juan County
Residency Districts



000318



Auditor
F. Milene Henley

Doris Schaller, Elections Supervisor
doriss@sanjuanco.com

San Juan County

P.O. Box 638, Friday Harbor, Washington 98250
(360) 378-3357 www.sanjuanco.com

Population and Number of Active Voters In the San Juan County Council Residency Districts

Prepared by Doris Schaller, San Juan County Elections Supervisor
December 13, 2012

A. Number of Active Voters of San Juan County Residency Districts as of 12/13/2012

Active Voters in Council Residency District No. 1.....	5,831
Active Voters in Council Residency District No. 2.....	3,958
Active Voters in Council Residency District No. 3.....	2,222
Active Voters for entire county:	12,011

B. Population of San Juan County Residency Districts as of the 2010 Federal Census

Population in Council Residency District No. 1.....	7,662
Population in Council Residency District No. 2.....	5,387
Population in Council Residency District No. 3.....	2,720
Population for entire county:	15,769

000443

000319

OK

OFFICE RECEPTIONIST, CLERK

To: Stephanie Johnson O'Day
Subject: RE: E-Filing No. 88574-5

Rec'd 6/5/13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Stephanie Johnson O'Day [<mailto:sjoday@rockisland.com>]
Sent: Wednesday, June 05, 2013 1:11 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Randall Gaylord; JeffE@ATG.WA.GOV; Lovel Pratt; lauraW2@atg.wa.gov; KirstinJ@atg.wa.gov; Bob Jarman; revealclean@gmail.com; Jamie Stephens; lisabyers50@gmail.com
Subject: E-Filing No. 88574-5

Appellants Brief

Filed by Stephanie Johnson O'Day
PO Box 2112
Friday Harbor, WA 98250

360 378-6278
sjoday@rockisland.com

-----Original Message-----

From: sjoday@rockisland.com [<mailto:sjoday@rockisland.com>]
Sent: Wednesday, June 05, 2013 12:57 PM
To: sjoday@rockisland.com
Subject: Scanned Doc From Stephanie Johnson O'Day Atty

Attached is a document for your review.

TASKalfa 250ci
[00:c0:ee:4b:5c:36]
