

Editorial: Let Sanders finish cases, regardless of objections

Never at a loss for an opinion, former Washington state Supreme Court Justice Richard Sanders had no reticence in sizing up five prosecuting attorneys who want him removed from a stack of leftover cases.

“Plain and simple, they see me as a potential vote on the other side of whatever they’re trying to accomplish,” the independent-minded if not outright maverick justice said.

On that point, there is no reason to doubt his judgment. The self-described libertarian’s stands on behalf of defendants’ due-process rights have often attracted criticism from prosecutors. Who knows, that might have contributed to his loss to Charles Wiggins in last year’s election.

But environmentalists have also criticized Sanders over the past 18 years for his rulings in defense of developers’ property rights. Maybe *that* factored into the election outcome.

Or maybe voters just liked Wiggins slightly better than they liked Sanders. The election went down to the wire.

Whatever influenced their decisions in 2010, state voters had elected Sanders three times before replacing him with Wiggins. So did the voters reject Sanders or embrace Wiggins?

The question is important, because the prosecutors in question – from King, Clallam, Snohomish, Skagit and Grant counties – say he shouldn’t participate in decisions on cases he heard before the election because he was defeated rather than “retired.”

The state Constitution allows the Supreme Court to appoint judges or retired judges to help clear up caseloads as pro-tem justices.

Maybe “defeated” isn’t “retired,” as the prosecutors maintain, but it isn’t necessarily “repudiated” either. In a democratic system where voters make their choices from ballots of two or more candidates, a second-place finish should not be treated as a guilty verdict.

In recent years, the Washington Supreme Court has routinely leaned on departing justices to tie up loose ends, giving them two months to resolve the cases they participated in. That’s a practical arrangement that enables the court to manage a heavy caseload in a timely way, but the prosecutors are suspicious of how Sanders will rule.

Already he's been the swing vote on a couple of 5-4 post-election decisions that overturned convictions.

Naturally, the prosecutors object, but the court wisely overruled them. To do otherwise would be to abandon their judicial independence and become agents of the prosecution. That would be a terrible precedent.