

70710-8

70710-8

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Aug 16, 2013, 4:32 pm
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

70710-8
NO. 88574-5

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.

*Filed
COA
8-21-13
KW*

**Reply Brief of Respondent San Juan County
Regarding Cross Appeal -- Laches**

Randall K. Gaylord, WSBA #16080
San Juan County Prosecuting Attorney
350 Court Street, P. O. Box 760
Friday Harbor, WA 98250
(360) 378-4101
Attorneys for San Juan County

ORIGINAL

TABLE OF CONTENTS

I. THE CROSS APPEAL.....1

II. CONCLUSION4

TABLE OF AUTHORITIES

CASES

LaVergne v. Boysen, 82 Wn.2d 718, 513 P.2d 547 (1973)..... 4
Lopp v. Peninsula School District 401, 90 Wn.2d 754, 585 P.2d 801
(1978) 3, 4

SAN JUAN COUNTY CHARTER

Charter section 8.31(3) 1, 3

OTHER AUTHORITIES

29 *CJS Elections*, section 4.34..... 2
15A WAPRAC § 2.1 and 2.3..... 2

I. THE CROSS APPEAL

The Plaintiffs acknowledge that they waited until after the election on Proposition 1 before they brought this suit. In the seventh cause of action, they asserted that the manner in which Proposition 1 was presented to the public was contrary to section 8.31(3) of the San Juan County Charter. SKCP 1036. This same challenge could have been made before the election, and for that reason, the seventh cause of action is barred by the doctrine of laches.

Plaintiffs claim that the lawsuit was timely because it was brought shortly after certification of the election. While that may be true as to the other claims in the lawsuit, the rule does not apply with respect to the seventh cause of action regarding compliance with charter section 8.31(3). Section 8.31(3) concerns the “manner” in which an amendment is “submitted” to the public for their vote. Plaintiffs’ seventh cause of action ripened at the time the Charter Review Commission determined the manner in which their work would be submitted to the voters and the way in which they combined and separated the charter amendments into Proposition 1, Proposition 2 and Proposition 3.

Plaintiffs have not challenged the legal and policy reasons for requiring extreme diligence in election related matters, especially when the action can be discovered and corrected before the election. A court

should not allow a person to gamble with public elections and hold their challenges regarding the manner in which an item is presented to the public until after the election has occurred. *29 CJS Elections*, section 4.34.

In calculating the time period of inexcusable delay, Plaintiffs use the wrong date – the date of the certification of election – and not the date the commission adopted its resolution, findings and propositions. (Plaintiffs’ Brief p. 23) The correct date for the claim regarding the manner in which the propositions were presented (and the application of the doctrine of laches) is June 9, 2012. SKCP 786.

Plaintiffs’ say they did not bring the seventh cause of action sooner because “they were not aware of the claim until it was filed.” (Plaintiffs’ Brief p. 25). No citation to the record is given and the assertion is hardly credible given the fact that the Plaintiffs are active in the community, including a former freeholder (Mr. Bossler), and a candidate for the Charter Review Commission (Mr. Gonce). Moreover, it is knowledge of the facts, not knowledge of the claim that is important. 15A WAPRAC § 2.1 and 2.3 (citations omitted) (discussing the discovery rule). The commission acted in June, so that is the date that matters.

At the trial court, and here, Plaintiffs cleverly did not deny the fact of their knowledge of the Propositions. San Juan County showed their

knowledge through their own admissions. (San Juan County's Brief at page 32). In the absence of a denial, the statements satisfy the level of proof needed to demonstrate knowledge for purposes of laches.

Even *if actual knowledge* was not shown, the adoption process included very public steps that provided *constructive knowledge* to the Plaintiffs. The public process provided Plaintiffs with a "reasonable opportunity to discover that they had a cause of action" just like in the case of *Lopp v. Peninsula School District 401*, 90 Wn.2d 754, 760, 585 P.2d 801 (1978) These opportunities included the meetings of the Charter Review Commission on June 9, 2012 and the meeting of the County council on July 9, 2012; providing the documents to the County auditor, and outstanding coverage in the news, on-line blogs, and by posting of the propositions on the County website. SKCP 786-820.

The County rejects the contention that prejudice "has not resulted" because the trial court has "not halted" the elections called for under Proposition 1. (Plaintiffs' Brief p. 26) The cross appeal is made in the unlikely event this appeal leads to a ruling that invalidates any part of Proposition 1 due to compliance with the procedural requirements of charter section 8.31(3). The County does acknowledge that if the seventh cause of action is dismissed on other grounds there is no prejudice and this cross appeal should also be dismissed.

Though Plaintiffs claim they asked for the matter to be “resolved in all deliberate speed” the facts tell a different story. (Plaintiffs’ Brief p. 24). For example, Plaintiffs did not even include all necessary parties until ordered to do so by the trial court two months after filing the complaint. SKCP 12 and SJCP 48. While Plaintiffs’ lawyer was vacationing, candidates for council positions were running campaigns, soliciting campaign contributions, traveling, and making personal sacrifices to run for office. SKCP 222 and SJCP 124. Using the correct dates and action of the Plaintiffs, this case bears substantial likeness to *LaVergne v. Boysen*, 82 Wn.2d 718, 513 P.2d 547 (1973) and *Lopp v. Peninsula School District*, 90 Wn.2d 754.

The prejudice from the delay is also evident from the money spent on the transition elections. Each candidate (who should be parties to this case) has spent about \$750.00 when they filed a declaration of candidacy, moreover, public records showed that the combined citizen contributions to candidate campaigns exceeded \$54,000 before the case was over. SKCP 35.

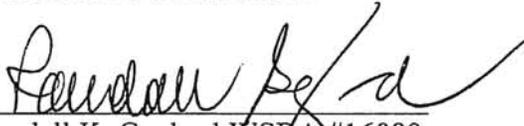
II. CONCLUSION

The County has demonstrated inexcusable delay and prejudice. If the Court rules in Plaintiffs’ favor regarding section 8.31(3) of the charter, then it should apply the doctrine of laches and order that the seventh cause

of action be dismissed.

Respectfully submitted this 16th day of August 2013.

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

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

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the foregoing document to be served, via electronic mail, on the following people:

Ms. Stephanie Johnson O'Day
Attorney at Law
P.O. Box 2112
Friday Harbor, WA 98250
Attorney for Petitioners
sjoday@rockisland.com

Mr. Jeffrey T. Even
Ms. Laura J. Watson
Deputy Solicitors General
Attorney General of Washington
P. O. Box 40100
Olympia, WA 98504-0100
Attorney for State of Washington
jeffe@atg.wa.gov
lauraw2@atg.wa.gov

And to:

Bob Jarman
P. O. Box 1523
Friday Harbor, WA 98250
bjarman@centurytel.net

Elisabeth Byers
P. O. Box 806
Eastsound, WA 98245
lisa@lisabyers.org

Lovel Pratt
2551 Cattle Point Road
Friday Harbor, WA 98250
lovel@rockisland.com

Jamie Stephens
P. O. Box 776
Lopez Island, WA 98261
jamies@rockisland.com

Brian McClerren
17 Swal Lech Lane
Lopez Island, WA 98261
revealclean@gmail.com

Dated this 16th day of August, 2013, at Friday Harbor,
Washington.



Cathryn S. Korth
Assistant to the Prosecutor