

This story has been changed to correct the status of the necessary parties.

Skagit County Superior Court Judge John Meyer enjoyed hearing the case challenging the validity of the three voter-approved Charter Amendments as it is rare to hear Constitutional cases in Superior Courts. He complimented both San Juan County Prosecutor Randy Gaylord and the plaintiff's attorney Stephanie O'Day for the way they handled the case. He promised his ruling, which will be written, well before the April 23 general election. The ballots are printed on March 15.

O'Day's presentation centered on concept of "one person one vote" equal protection under the law, the State's Constitution which calls for only one item in each proposition.

O'Day pointed out additional language was added by the prosecutor to two of the propositions after they were approved by the county council. She contended the ballot language was intentionally confusing and did not tell the voters the districts would not be equal in size.

An attorney from the Attorney General's office said the State Constitution language only pertained to state propositions. He emphasized that Charter counties are free to decide how to form their government.

O'Day repeatedly contended the county was obligated to obey the state's Constitution.

Gaylord contended votes weren't diluted since the county is all one district. The three residency districts - San Juan Island, Orcas Island, Lopez/Shaw islands - are for purposes of making sure there will be one candidate come from each of the three different areas.

Since the voters vote for all three the votes cannot be considered of lesser value under the new system. He used the white board to show his calculations.

Under his math, the votes are not 1 in 2,000 as they were in each of the six districts. They are 1

in 12,000. This does not dilute the vote.

The representation is no longer 1 candidate per 2,000. Gaylord said the representation is now is now 1 in 4,000. He divided the 12,000 voters by the three council members. Judge Meyer asked if that was how it was under the old commissioner system and Gaylord replied, "Yes".

Under the Commissioner form of government before the charter, each commissioner represented their own legislative district. So the Lopez commissioner represented about 17% of the residents of the county, the Orcas Commissioner about 35% and the San Juan Commissioner represented about 48% of the population. Each Commissioner, despite not representing an equal number of citizens, had one vote on the council.

The distinction is between legislative and residency districts.

Gaylord's responded to O'Day's argument that residents from different islands had unequal chances of becoming council members under the new system - a citizen from San Juan has a 1 in 7,662 chance, Orcas citizen 1 in 5,353 and a Lopezian 1 in 2,753 - by listing a variety of factors he said were more important in determining who was elected. Funding, personality, qualifications, strategy, etc.

Both sides cited numerous examples of case law which they believed backed up their arguments.

Just before the end of the arguments, the judge asked both attorneys about possible remedies he could impose if he decides that way. Gaylord said the option of having the Charter Review Commission redo the review is not one.

At the end of the day, which started around 11 a.m. due to a late ferry and ended at 5 p.m., the judge declined to hear from the necessary parties - the council members and candidates who were added to the case - instead inviting them to send comments to him in writing before the end of the day on Monday.

All six sitting council members and all six candidates were added to the case as necessary parties after a motion was made by the prosecuting attorney earlier in the case. They then had the choice of becoming involuntary plaintiffs, voluntary plaintiffs, defendants or asking to be dismissed.

At the time the judge ruled in favor of Gaylord's motion, he stated: *The court further finds that the interests of the above-named council members and candidates are adequately and appropriately represented by the existing Defendants.*

When council members sought advice from the prosecutor, he told them he couldn't represent them and advised them to hire their own counsel.

At the beginning of the Feb. 19, 2013 hearing the judge apologized for an error he had made at the time of his order. He said he should have said the necessary parties "were adequately and appropriately represented by the existing Defendants and plaintiffs." He apologized for any stress and financial costs which may have happened because of his error.

He dismissed Council member Patty Miller from the case as he had Council member Rick Hughes earlier in the day. Both had requested their dismissals.

Council members Rich Peterson, Marc Forlenza and former candidate Greg Ayers are plaintiffs. Forlenza and Ayers could have been automatically dropped because they were eliminated in the primary race. They asked to continue as plaintiffs. Peterson was re-elected in 2010 and his term will end early due to the Charter amendments. He decided to become a plaintiff.

Council member Jamie Stephens, Bob Jarman; candidates Lovel Pratt, Lisa Byers and Brian McClerran are also necessary parties to the case.

Pratt chose to become a defendant. Byers did not ask to be dismissed because she agreed with the judge's first statement.

Miller wanted clarity on the possible financial liabilities she would have if she remained as an involuntary plaintiff. If the plaintiffs lose the case and the judge awards court costs to the county as Gaylord has requested, would involuntary plaintiffs have to pay. That was not resolved in court today.

Miller's dismissal makes that question moot.

The original plaintiffs who brought the case to trial are Mike Carlson, Jerrold Gonce and Jeffrey Bossler.

Editor's note: I need to track down Stephen's, McClerran and Jarman's status as to whether they are plaintiffs or defendants. McClerran did not attend. Jarman also did not due to his recent surgery.

PDFs

[PLANTIFF's CASE](#) (749 KB)

[DEFENDANTs RESPONSE](#) (657 KB)