

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

NICHOLAS POWER,

Plaintiff,

v.

SAN JUAN COUNTY, a municipal
subdivision of the State of Washington;
MILENE HENLEY, San Juan County
auditor in her personal capacity; JOHN
and JANE DOES 1-99, unknown San
Juan County officials, employees and
agents, in their personal capacity,

Defendants.

No. 2:18-cv-00811-MJP

DECLARATION OF NICHOLAS POWER
I/S/O MOTION FOR TEMPORARY
RESTRAINING ORDER

Note for Motion Calendar:

Under penalty of perjury I declare the following is true and correct:

- 1. My name is Nicholas Power. I am currently a licensed attorney in the State of Washington and am competent to testify in this matter.
- 2. I was originally licensed to practice law in Illinois in 1997 and then in Washington State in 2013.
- 3. I have been a resident of San Juan County Washington for 10 years. I am a solo practitioner and represent clients throughout the state of Washington where I primarily focus on litigation involving public records, the protection of whistle-blowers, and campaign and electoral law. I also practice a significant amount of land-use law.
- 4. San Juan County is comprised of almost 200 islands in northern Puget Sound. According to the last available census data in 2010 the County has a population of 15,769 people spread primarily over four ferry-served islands. Typically, between 8,000 and 9,000

1 ballots are cast for elected positions in the County and elections are not infrequently won
2 and lost by a very slim margins of tens of votes.

3 5. I have been politically vocal in the County and have also been primary counsel in a
4 number of lawsuits where my clients have alleged wrongdoing by the County primarily
5 in the areas of whistle-blower retaliation, the withholding of public records, and violation
6 of Washington’s Open Public Meetings Act.

7 6. For the past 10 years I have been very disturbed by what I have witnessed as the pattern
8 and practice of elected officials engaging in cover-ups and self-serving behavior in the
9 County.

10 7. In order to try to improve governance in San Juan County I decided my efforts would be
11 most useful by running for the office of San Juan County Prosecuting Attorney.

12 8. Accordingly, on May 18, 2018, I filed a declaration of candidacy for that position.

13 9. My opponent in the election has served as Prosecuting Attorney for 24 years and has
14 never been challenged for that office during his tenure.

15 10. The County also is very much a “company town”.

16 11. By far the largest employer is the County itself with well over 200 employees. Other
17 public employers such as the County’s four school district, four fire districts, three port
18 districts make up significant portion of the remainder of employment opportunities in the
19 County.

20 12. By comparison, the largest private employers in the County have fewer than 30 full time
21 20 employees.

22 13. People are genuinely afraid of criticizing local government because they justifiably fear
23 retribution and many are concerned that if they speak out they or a family member will
24 not be able to secure employment or continue employment with the County or other local
25 municipal entity.

26 14. Personally campaigning in the Islands is uniquely difficult because San Juan County is
27 comprised of Islands access to voters is challenging at times. Accordingly signage and
28 printed communication is more important because candidates are prevented from easily
29 travelling to meet with voters.

30 15. San Juan County is a very small media market and political advertising choices are
31 limited. We have an anemic weekly printed paper, the Journal of the San Juans, which
32 serves as the County’s paper of record and also maintains a website. We also have a half-
33 dozen or so websites or local news blogs that post news stories with varying degrees of
34 regularity and quality. We have no local TV or radio to speak of – and those media
35 providers that do serve us are too unfocused to economically provide local candidates
36 with appropriately targeted marketing.

1
2 16. Because of this very limited advertising landscape, my need to use campaign signs is particularly acute.

3 17. In addition, the posting of a political sign in support of a challenger in this County is
4 recognized to some degree as an act of outspokenness and carries a particular weight with
5 local voters because of this. In other words, people generally know who lives where and
6 a yard sign carries even more significant weight because of the show of support is not as
7 anonymous as it would be in larger political markets.

8 18. I was flummoxed to learn when I started to research where I could legally erect signs
9 that the County had code provision that prevented the erection of political signs except
10 with in 45 days of an election.

11 19. Since the publication of Auditor Henley's "op-ed" piece, I have been rebuffed by several
12 people who I knew supported my candidacy but nevertheless did not want to affix a
13 campaign bumper sticker or post a political sign because they said they feared retribution
14 by the County or approbation by their neighbors for placing such a sign.

15 20. Several people I have approached have also indicated that they read Auditor Henley's
16 statements and still are under the impression that there is a temporal limit in the County
17 that specifies when political signs may be posted.

18 21. In fact, some people seem to be under the impression that I am asking for the temporal
19 limitation to be lifted by ordinance and that such an ordinance is bad public policy.

20 22. I have attached to this Declaration as Exhibit A, a true and correct copy of a screenshot
21 of the County's homepage on which the Auditor's "op-ed" is posted.

22 23. I have attached to this Declaration as Exhibit B, a true and correct copy of a letter to the
23 editor which has now been posted on the main homepage of the County's Paper of
24 Record, The Journal of The San Juans by Meaghan Rader.

25 24. I have attached to this Declaration as Exhibit C, a true and correct copy of a screenshot
26 of a comment indicating that signs should be restricted and supporting my opponent.

27 25. These interactions have left me with the conclusion that Auditor Henley's "op-ed" piece
28 suppressed protected speech and act to frustrate my viability as a candidate.

29 26. In fact, the County appears to be intent on republishing Auditor Henley's "op-ed" piece
30 as it is being republished almost 3 weeks after its initial dissemination by local papers. I
31 have attached as Exhibit D a true and correct screenshot showing this republication in
32 "The Island Weekly" which is the "weekly web magazine" of the paper of record.

33 27. I ask that this Court promote the operation of an open and free democracy by invoking,
34 in no uncertain terms, a remedy so that I, and all citizens of San Juan County, may speak
35 and communicate freely about political matters.

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DATED: June 21, 2018 in Friday Harbor, WA

s/Nicholas Power
Nicholas Power WSBA #45974

CERTIFICATE OF SERVICE

I hereby certify that on this date I filed the foregoing document with the Clerk of the Court using the court's ECF filing system which will automatically serve the filing on the following registered ECF user:

Michael T. Kitson
mtk@pattersonbuchanan.com
Patterson Buchanan Fobes & Leitch

DATED June _____, 2018, at Seattle, Washington.

s/Leslie Boston
Leslie Boston

Exhibit A

Plan an outing with your family, friends, or your special someone and enjoy one (or all!) of these classics at the Drive-In. Admission is first come, first served at 8:30 PM, \$5/person or \$20 for a family of 5. Movies start just after dark. Audio is tuned in through the FM dial of your car radio, larger vehicles (or vehicles with storage containers on top) will be parked in the second row or further. For more information on the Drive-ins, check out the [Fair's Website](#). :)

San Juan County Fair Entertainment Line Up Announced!

The San Juan County Fair is excited to announce the entertainment for 2018. There is something for everyone, all ages, and all genres -- Headliners, Family and Variety Acts, Concert Lunch Series, and Workshops.
[Read on...](#)

All Residential Burn Permits Expire June 15th.

Fire Risk Level - Moderate; All Residential burning is closed until Fall. Campfires will continue to be allowed in contained fire pits no larger than 2' by 2' in size, burning fire wood only, not yard waste. In case of a burn ban, all fires will be closed
[Read on...](#)

It's political sign season!

It's election time, and with that comes the annual crop of political signs, popping up like pesky dandelions across the countryside. Political signs serve a purpose, but public sentiment is not always in their favor.
[Read on...](#)

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Health Department	360-378-4474
Human Resources	360-370-7402
Parks and Fair	360-378-8420
Planning/Permits	360-378-2354
Public Works	360-370-0500
Sheriff's Office	360-378-4151
Treasurer	360-378-2171

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*** San Juan County News ***

Posted on: May 30, 2018

It's political sign season!

It's election time, and with that comes the annual crop of political signs, popping up like pesky dandelions across the countryside.

We've been fortunate in San Juan County. A well-meaning ordinance – now de-toothed by a recent court action – combined with strong local sentiment has kept our sign infection at a minimum.

Political signs, according to San Juan County land use code, are permitted, so long as they are put up not more than forty-five days before an election and taken down within three days after. It seemed like a good idea

back in 1998, when the ordinance was adopted. Nobody wanted to see the landscape permanently blighted with signs, especially in a community such as ours, a place people come for the natural environment and rural appearance. Constraining signs to a well-defined time period seemed like a reasonable compromise.

Political signs do serve a purpose. In a rural area, where radio or TV spots aren't practical, yard signs may be the only way for a candidate to get his or her name out there. Anecdotal stories about the unexpected election of candidates with no qualifications but familiar-sounding names suggest that people are, indeed, more likely to vote for a name they've seen often than for one they've never seen.

Political strategists say that supporters love political signs. Supporters of a measure or a candidate may not have time to campaign, but they can show their allegiance by sticking a sign in their yard. A corollary of this phenomenon is that some voters are influenced less by the content of signs than by their location. If someone they respect is proudly sporting a yard sign, the voter may be more inclined to vote the same way.

Other political strategists opine that signs have little, if any, effect on how people vote. The small effect they do have may be offset by the votes they lose because of other voters' distaste for signs. Resources spent buying and locating signs could better be used, many campaign managers argue, on doorbelling and direct mail.

As an administrator of elections, I like yard signs because they remind people there's an election coming up. Not so much in some mainland locations, where signs go up eighteen months before an election. But San Juan County's law – given recent events, let's just call it a "guideline" – because it limits the duration of the signage, effectively alerts people that it's almost time to vote.

Of course, the reason courts have struck down San Juan County's, as well as other, political signage laws is that limiting signage infringes on free speech. Like babies and apple pie, free speech is something you don't mess with.

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San Juan County's political sign ordinance has never been enforced. Still, it has become a time-honored local tradition to limit the amount of time political signs are displayed, and to politely remove them as soon as possible after an election is over. We may someday look back on those days wistfully. Or maybe a short-lived law will have created an enduring local tradition. Only time, and candidates, will tell.

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[Improvements to Local Spill Response Capacity](#)

Posted on: May 17, 2018



[Recording Fees Increase June 7](#)

Posted on: May 10, 2018



Exhibit B

Letters to Editor

No to political sign extension

(Editor's note: Read Henley's guest column at www.sanjuanjournal.com.)

I read Milene Henley's recent letter to the editor and fully agree that political signs, aka roadside spam, don't need to be up more than 45 days prior to an election.

To expand the spam window serves no purpose and only increases the potential of the signs turning into litter.

Posting signs outside of those guidelines will not help you earn our votes.

MEAGHAN RADER
San Juan Island



Editorial

Disagree with zoning

By Journal staff

We disagree with the Town of Friday Harbor Council's recent decision.

On June 7, the Town of Friday Harbor Council voted 4-1 to not rezone the now-shuttered Life Care Center property from professional services to commercial.

We understand that residents, many of whom saw friends and family forced to leave the island to find treatment or employment, were upset about turning this needed resource into a commercial enterprise. Islanders need the services provided at the Life Care Center, so how could a search for a potential buyer of the business end?

The problem is that this type of care facility does not work in this community.

The former owner of the Life Care Center has made it clear that this kind of skilled nursing facility is not fiscally possible in this community.

We agree that we need health care for our aging population, but reinstating an old model that did not work is not the solution. A local task force, whose members have been researching how to bring the services offered at the skilled

Exhibit C

Lecture on Sense of Place and Active Hope

- Orcas Food Co-op's Low Tide Seaweed Walk with Ryan Drum
- Agenda for Health Care District Meeting on Tuesday
- Sheriff's Report | May 30 – June 5, 2018
- Letter to Editor | Thank You, Thank You from OIEF
- Health Care District to Meet in Special Working Session
- Deer Harbor Plan Review Committee Meeting Upcoming
- Guest Opinion: Planning Commission's Vision Statement Reinforces Protections for Environment
- Community Development Office Will Take a Day Off

Emergency Alerts Sign-up



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Council member why he is approving spending taxpayers money to litigate rather than step up and deal with this on a personal rather than confrontational manner.

Peg Manning on June 7, 2018 at 7:23 pm said:

Michael—that's it in a nutshell. The County should not be appealing this decision. Elected officials remain free to express their personal opinions on their own time and in their own forums.

Dan Christopherson on June 7, 2018 at 11:32 pm said:

Nobody wants to see these campaign signs any longer than the time limit. It's visual pollution, like billboards. Thank you Randy Gaylord!

Rob Thesman on June 8, 2018 at 5:53 pm said:

"Nobody wants to see these campaign signs any longer than the time limit."

There is no time limit. Gaylord has already conceded that the ordinance was unconstitutional as to temporal rules the day it was enacted. Which was wise because he documented internally that it was constitutionally unenforceable more than 15 years ago. (Thank you Randy.) The case was moved to federal court over an entirely different issue.

An interesting question is why several political generations of county council members and Randy left a statute on the books for well over a decade that they knew was unconstitutional (and never told the public).

Peg Manning on June 9, 2018 at 6:54 pm said:

Dan's comment proves the point: statements by elected officials are taken as facts by citizens. The fact that the time limit that appears in the ordinances of San Juan County is unconstitutional should certainly have been included in the recent statement. And perhaps we can get around to removing the offending ordinance after 15 years of knowing it's unconstitutional? (I'm no fan of election signs, but there are legal and important, especially for non-incumbents.)

[Leave a Reply](#)

Your email address will not be published. Required fields are marked *

Exhibit D



Election season means time for political signs

Mon Jun 18th, 2018 4:27pm · NEWS

