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Courts Decision
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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR ISLAND COUNTY

COUNTY CLERK OFFICE

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LISA A. HENDERSON
SAN JUAN COUNTY, WASHINGTON

Law & Justice Facility, 101 NE 6th St, PO Box 5000, Coupeville WA 98239-5000
Phone: (360) 679-7361 Fax: (360) 679-7383

CHRISTON C. SKINNER
Judge
CAROLYN CLIFF
Judge
MEGAN FRAZIER
Court Administrator

August 16, 2022

Alyssa Lee Koepfgen, Esq.
Eric D. "Knoll" Lowney, Esq.
Smith & Lowney, PLLC
2317 E. John St.
Seattle, WA 98122

alyss@smithandlowney.com
knoll@smithandlowney.com

Callie Anne Castillo, Esq.
Lane Powell, PC
1420 Fifth Ave, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402

castilloc@lanepowell.com

Jonathan West Cain, Esq
Deputy Prosecuting Attorney
San Juan County Prosecutor
350 Court Street
P.O. Box 760
Friday Harbor, WA 98250

JonC@sanjuanco.com

Ref: San Juan County Superior Court Case number 22-2-05073-28
Maureen See, et al vs. San Juan County, et al

Counsel:

This matter is before the court upon the petition and related motion submitted by Maureen See and Sharon Abreu ("Petitioners"). On August 9, 2022, the petitioners filed an action in San Juan County Superior Court in which they requested that the court correct an "election error" utilizing the procedure set forth in RCW 29A.68.011. Specifically, the petitioners contend that the San Juan County Council

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27

made an “election error” when it voted on August 2, 2022, not to refer four proposed charter amendments to be placed on the upcoming general election ballot for San Juan County. Those four amendments were forwarded to the Council on December 13, 2021.

The respondents named in this litigation are “San Juan County,” (“County”) the “San Juan County Council,” (“Council”) and “Milene Henley in her capacity as the San Juan County Auditor.”

The Court conducted a hearing in this matter on August 15, 2022. Petitioners and respondents appeared at the hearing through counsel. In addition to the arguments of counsel, the court reviewed and considered the Affidavits for Correction of Election Error submitted by Maureen See and Sharon Abreu (Petitioners); Declarations of Maureen See and Sharon Abreu; the Declaration of Callie Castillo and attachments thereto; the Declaration of Camolyn Armstrong; the petitioners’ petition and motion, the responses of San Juan County, and San Juan County Council (same document); and the response of Milene Henry.

Petitioners were members of the 2021 San Juan County Charter Review Commission (“CRC”). The CRC is a commission created by voters in 2005 when they approved the San Juan County Home Rule Charter. The purpose of the CRC is to propose amendments to the County Charter which are then submitted through the County Council to the County Auditor to be placed on the ballot for a vote by the voters of San Juan County.

The San Juan County Home Rule Charter (“Charter”) provides for a review of its provisions by an elected Charter Review Commission after five full years of operation and at least every ten years thereafter. Pertinent sections of the Charter are set out below.

Section 9.20 - Election Procedures and Period of Office

(1) The County Council shall cause an election of a CRC in 2020 and at least every ten (10) years thereafter provided that the CRC election is held in an even numbered year.

(a) The CRC shall consist of fifteen to twenty-five (15-25) persons. The number of CRC members for each County Council Residency District shall be apportioned according to the population distribution in each County Council Residency District.

(b) Candidates for the CRC must be residents of the county and registered voters of the district in which they run and have been registered voters in the County for at least five (5) years preceding their election.

(c) There shall be no filing fee nor shall there be a primary. The qualified voters of the respective districts shall vote only for candidates from their district at the general election. Candidates' names shall appear on all ballots as drawn by lot.

(d) The member of the CRC who receives the greatest number of votes shall convene the first CRC meeting.

(e) **The term of office shall be the shorter of one (1) year or when final recommendations are submitted to the Legislative Body [County Council] for referral to the voters.**

(f) The CRC shall meet at such times and in such places as it deems appropriate upon having given public notice.

(Emphasis is mine.)

Section 9.31(1) of the Charter provides:

"Any proposed Charter amendment *shall* be filed and registered with the County 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 County Auditor."

Section 9.32 states:

"The CRC may propose amendments to the Charter by filing such proposed amendments with the County Council who *shall* submit the amendment to the voters at the next November general election at least ninety (90) days after filing the and registration of the amendments."

Members of the 2021 CRC were elected in 2020 and began work on January 21, 2021. The CRC submitted its first installment of proposed charter amendments to the County Council on July 13, 2021. This submission was sent via email with the following communication to the Council:

"It is important to note that these six proposed Amendments are not the final proposed Amendments the Charter Review Commission will submit this calendar year... The County Council should expect to receive additional proposed Charter Amendments at a future date for submission to the November 2022 General Election Ballot. The Charter Review Commission will formally notify the County Council at a future date when we submit our final proposed amendments, and our work is concluded."

The CRC continued to conduct meetings in public after the first set of amendment proposals were submitted to the County Council. There is nothing in the record that demonstrates or even suggests that the Council or the San Juan County Prosecuting Attorney, Randy Gaylord, objected to the continuation of these meetings because

On December 13, 2021, the CRC submitted its second and final installment of proposed amendments to the County Council for submission to the auditor for placement on the November 2022 ballot. This was done via a formal Resolution. The Resolution was submitted by the CRC to the Council via email, which stated "we are formally notifying the Council and Auditor of the conclusion of our Term of Office." The resolution also stated that it is the submittal of "final recommendations" and that the CRC will conclude its term of office and work in accordance to Section 9.20 of the San Juan County Charter." CRC Chair Kevin Ranker also presented the Resolution to the Council in a public meeting.

Between the time of the July 2021 submission and the Council vote on August 5, 2022, no one from the Council, including staff or legal representatives, raised any questions or issues related to the CRC's assertion that the first submission was not the final one; or that the second submission was its "final" submission. Similarly, there is nothing in the record to suggest that any Council member or representative questioned the CRC chairperson's assertions in either email accompanying the proposed amendments.

The deadline for the County Council to submit the CRC's proposed amendments to the County Auditor was 4:30 p.m., August 2, 2022. At approximately 5:15 PM on August 2, 2022, forty-five minutes after the deadline for submission to the County Auditor, the Council returned from executive session and without public input or discussion, unanimously voted not to put forward the proposed amendments.

According to the declaration of Camolyn Armstrong, the San Juan County election manager, the Voter's Pamphlet page count must be submitted to the Secretary of State by August 19, 2022. By August 30, 2022, election information from San Juan County that is to be included in the Voter's Pamphlet is sent to "press" no later than August 30, 2022. Clearly, the timing of the Council's decision was intended to substantially limit the CRC's ability to respond in an effective and timely manner.

Decision

After considering the arguments of counsel, the evidence presented and applicable law, the Court finds and concludes as follows.

RCW 29A.68.011 provides the Court with authority to correct the "ballot error" that is alleged by the petitioners. Specifically, the statute permits this Court to address the petitioner's claim that a ballot error occurred when the Council refused to refer the four proposed charter amendments to the auditor for inclusion on the November 2022 general election ballot. The Council's decision not to refer the four proposed amendments submitted in December of 2021 was contrary to the terms of the Charter and amounts to a ballot error that should be corrected.

There is no provision or prohibition in the Charter that precludes the members of the CRC from submitting proposals for amendments to the charter in more than one batch. The CRC made it clear to the Council that its first submission of six proposed amendments for consideration by the voters in the November 2021 election was but one of two packets that would be submitted during the CRC members' term as Commission members. Accordingly, the CRC members terms did not expire at that time since the first submission was not a "final" submission of proposed amendments.

The Council and the Prosecuting attorney were aware or should have been aware of the legal significance of the CRC's email communication submitted with its first set of proposed amendments. Had the CRC been advised (by the Council, a member or the Prosecutor) in July of 2021 or soon thereafter, that it was the Council's position that the first submission was a "final" submission (thereby ending the commission members' term of office), the CRC would have had other options. After their first submission, the CRC continued to meet in public with the knowledge of the Council and the Prosecuting Attorney. No one advised or suggested that the members of the Commission were wasting their time or that any future referrals would be rejected.

The Council waited until August 2, 2022 to make its decision to reject the last four proposed amendments. This decision was based on the Council's erroneous conclusion and belief that the CRC members' term of office ended in July of 2021 and that any further submissions were procedurally invalid.

Not only was this conclusion erroneous in the Court's view, but it was also not the Council's decision to make.

In addition to its erroneous conclusion that the Commission was not duly constituted at the time it referred the recommended amendments in December of 2021, the Council should be judicially estopped from refusing or failing to refer those amendments to the auditor for inclusion on the November, 2022 general election ballot.

In *Lybbert v. Grant Cnty., State of Wash.*, 141 Wash. 2d 29, 35, 1 P.3d 1124, 1127–28 (2000), the Washington Supreme Court held as follows:

Equitable estoppel is based on the notion that "a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon." *Kramarevcky v. Department of Soc. & Health Servs.*, 122 Wash.2d 738, 743, 863 P.2d 535 (1993) (quoting **1128 *Wilson v. Westinghouse Elec. Corp.*, 85 Wash.2d 78, 81, 530 P.2d 298 (1975)). The elements of equitable estoppel are: "(1) an admission, statement or act inconsistent with a claim afterwards asserted, (2) action by another in [reasonable] reliance upon that act, statement or

admission, and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission.” *Board of Regents v. City of Seattle*, 108 Wash.2d 545, 551, 741 P.2d 11 (1987).

All three elements of equitable estoppel have been established as noted above.

The petitioners’ motion and Petition are granted. This decision is intended to be a final disposition of the issue as contemplated by RCW 29A.68.011. An order is being filed separately from this memorandum decision.¹

Sincerely,



Christon C. Skinner
Judge

¹ The Court is not addressing the issue of the Open Public Meetings Act violation raised by petitioners since it is not necessary to do so in arriving at this decision.