

Contested election history of Washington

At least a dozen elections have been contested in Washington State history. The attention generated by these cases stimulated the development of the legal precedents and state statutes that govern contested elections today.

The Washington State Legislature enacted RCW 29A.68.011, giving the Washington State Supreme Court greater authority to address state election disputes.

The Supreme Court reflected on its election responsibilities In *State ex rel. Kurtz v. Pratt*, 45 Wn.2d 151, 273 P.2d 516 (1954):

“If we should refuse to act in the instant matter we would be remiss in our duty as members of the court of last resort of this state, in that we would disregard the responsibility relative to the protection and orderly conduct of elections tendered to us by the legislature.”

Through the years, the Courts have heard contested election cases on issues such as incorrect voter registration, the legality of absentee ballots and the statute of limitation for contesting an election.

The courts had little opportunity to establish many definite ground rules for election contest cases until our State Supreme Court’s *Dumas v. Gagner* decision in 1999

Principles established

***Dumas v. Gagner*, 137 Wn.2d 268,971 P.2d 17 (1999):**

- Dealt with a newly elected port commissioner. Questions were raised about the candidate’s residency.
- In fact, the candidate’s residence was on three lots that were treated as a single residence. An election district line separated the residence into two commissioner districts.
- The courts upheld the election because the County Auditor had correctly recorded that the candidate’s known address was in one district.
- Several general principals for election contests came out of this case:
 - “Chief among them is the principle, long followed by this Court, that the judiciary should ‘exercise restraint in interfering with the elective process which is reserved to the people in the state constitution.’”
 - “Unless an election is clearly invalid, ‘when the people have spoken, their verdict should not be disturbed by the courts . . .’”
 - “This policy of judicial restraint dictates that “an ‘informality or irregularity’ in an election which did not affect the result is not sufficient to invalidate the election. “
 - “Statutory provisions relating to the conduct of an election, such as requirements for notice, have been held to be directory only, and even if not followed precisely, will not render an election void.”
 - “But, statutory procedures that affect the merits of the election are mandatory, and the election is void if not followed.”

These principles imply that an error that did not change the outcome of the election did not establish sufficient cause to set the election aside. The burden is on the challenger to prove that the error altered the election results.

Although a fairly new addition to case law, the principles defined in *Dumas v. Gagner* were evident in several older cases involving illegal votes.

Cases involving illegal votes

Hill v. Howell, 70 Wash. 467, 126 P.954 (1912):

- Involved an election for superior court judge in Douglas and Grant counties that resulted in a difference of 5 votes. Mr. Hill received 1,222 votes, and Mr. Steiner received 1,227 votes.
- Mr. Hill contested the election and presented a number of illegal votes and votes that were not processed because of an election administrator error.
- Several of the ballots in dispute were cast by citizens who couldn't read English, which was at that time a constitutional violation. In addition, several voters stated that election workers closed the polls early.
- The court determined that some of the votes should be added or subtracted from the totals. In the end, Mr. Steiner still received more votes than Mr. Hill.
- "These considerations lead to the conclusion that candidate Steiner, after all votes in his favor are deducted which can reasonably be questioned, still has a majority of the legal votes cast at the primary election for the office for which he is a candidate, and is entitled to have his name certified by the Secretary of State as such candidate."

Foulkes v. Hays 85 Wn.2d 629, 537 p.2d 777 (1975):

- Involved a county commissioner race in Adams County. Foulkes won the original count by 37 votes, and Hays requested a recount.
- Hays won the recount by 71 votes. Almost all of the changes in results came from 12 of the 30 precincts in the county.
- Testimony from witnesses [my preference is to strike "expert" to avoid currently unforeseen problems in the upcoming trial] at the trial revealed that "opportunity" was provided where people had "access" to the ballots during the recount process., with the ballots left in bags that were locked, but with the keys in those locks. And markings appeared on the ballots that were not made by voters.
- The court set aside the election and ordered a new election. The Supreme Court agreed.

In *Foulkes v. Hayes*, the race was set aside. When an election challenge is centered on illegal votes, the election may be set aside if the number of illegal votes changes the outcome of the election.

The majority of election contests heard in Washington courts concerned local elections. County Commissioner, County Prosecutor and Superior Court Judge are frequently contested positions. The successful passage of school levies has also brought several challenges. Other historically contested positions are Justice of the Peace, Port Commissioner, County Auditor, State Auditor and Governor.