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**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

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DIVISION III
STATE OF WASHINGTON
BY _____

SPOKANE ENTREPRENEURIAL CENTER, SPOKANE COUNTY,
DOWNTOWN SPOKANE PARTNERSHIP, GREATER SPOKANE
INCORPORATED, THE SPOKANE BUILDING OWNERS AND
MANAGERS ASSOCIATION, SPOKANE ASSOCIATION OF
REALTORS, THE SPOKANE HOME BUILDERS ASSOCIATION,
THE INLAND PACIFIC CHAPTER OF ASSOCIATED BUILDERS
AND CONTRACTORS, AVISTA CORPORATION, PEARSON
PACKAGING SYSTEMS, WILLIAM BUTLER, NEIL MULLER,
STEVE SALVATORI, NANCY MCLAUGHLIN, MICHAEL
ALLEN, and TOM POWER,

Respondents.

v.

ENVISION SPOKANE,
Appellant,

and

Spokane Moves to Amend the Constitution, Vicky Dalton in her
official capacity as Spokane County Auditor, City of Spokane,
Defendants

**RESPONSE BRIEF OF VICKY DALTON IN HER OFFICIAL
CAPACITY AS SPOKANE COUNTY AUDITOR**

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I. IDENTITY OF RESPONDING PARTY

Vicky Dalton, Spokane County Auditor (Auditor), by and through her attorney, Dan L. Catt, Senior Deputy Prosecuting Attorney for Spokane County, and submits this Response to Envision Spokane's Opening Brief.

II. INTRODUCTION

The Spokane County Auditor was a necessary party below because the Respondents, Spokane Entrepreneurial Center, et. al., brought their challenge to the Community Bill of Rights Initiative after the City of Spokane's City Council passed and submitted a formal resolution to the Spokane County Auditor requesting a special election be held on the November 5, 2013, in conjunction with the General Election, and that the Initiative appear on the Ballots. Once the request was received the Initiative ballot title would appear on the ballot absent either the City Council timely passing a resolution withdrawing the Initiative or a judicial order enjoining the appearance of the Initiative on the ballot. Conversely, the Spokane County Auditor is not a necessary party to this appeal and Envision Spokane's request that this Court order the Spokane County Auditor to place valid parts of the Initiative on the next available ballot is misguided. If this Court were

to determine parts of the Initiative are valid, any Order issued should be directed to the City of Spokane to take the proper actions to have the Initiative appear on the next appropriate ballot.

III. STATEMENT OF THE ISSUES

- A. Did the trial court error in granting declaratory judgment voiding all substantive provisions of the Community Bill of Rights?
- B. If all the provisions of the Community Bill of Rights are void, did the trial court error in enjoining its appearance on the ballot?

IV. RESTATEMENT OF FACTS

For purposes of Spokane County Auditor's Response, City of Spokane's Restatement of the Facts is adopted and restated herein by reference.

V. LAW AND ARGUMENT

- A. **Did the trial court error in granting a declaratory judgment voiding all substantive provisions of the Community Bill of Rights?**

Spokane County Auditor continues to take no position on the substantive provisions of the Initiative and legality of the declaratory judgment action.

B. If all the provisions of the Community Bill of Rights are void, did the trial court error in enjoining its appearance on the ballot?

In Washington State, the secretary of state, is designated the chief election officer whose election duties are carried out through an Election Division (RCW 29A.04.230, RCW 43.07.300 and 310; *See also*, Wash. Const. art III, §17). One of the duties of the secretary of state is to make reasonable rules to facilitate the execution of elections (RCW 29A.04.611 and Title 434 WAC). The secretary of state also ensures each county auditor is provided with current election laws of the state (RCW 29A.04.235).

In Washington State, county auditors are considered the ex-officio supervisors of elections at the county level (RCW 29A.04.216). County auditors are charged by statute with the overall responsibility to conduct state and local elections *Id.* A county auditor's duties relating to conducting elections are contained in Title 29A RCW and Title 434 WAC, and are recognized by the courts as largely ministerial acts. *Zapotocky v. Dalton*, 166 Wn. App. 697, 704, 271 P.3d 326, 329 reviewed denied, 174 Wn.2d 1011, 281 P.3d 687 (2012); *State v. Superior Court for King County*, 121 Wash. 588, 591, 210 P. 15 (1922).

In Washington, the costs of having measures¹ appear on ballots in an election handled by a county auditor are ultimately borne by the constituent requesting it, even if it requires allocating out proportionate shares of the costs as authorized under RCW 29A.04.410. Essentially, when a county auditor places a city measure(s) on a ballot in conjunction with another election, the costs and results of each jurisdiction's ballot titles are accounted for and reported separately. A county auditor, as ex officio elections officer, is merely fulfilling ministerial duties in conducting the election on behalf of the city.

Under RCW 29A.04.321 and .330 cities are specifically allowed to request county auditors conduct special elections for city measures, but only if certain conditions are met. The city's request must be by formal resolution and received by the auditor prior to a statutorily imposed cutoff dates *Id.*

When a charter city² submits a measure to the auditor for placement on a ballot, the city attorney is responsible for review and approval of the ballot title (RCW 29A.36.071). The actions of a county

¹ "Measure" includes any proposition, question or issue submitted to the voter. *See* RCW 29A.04.091.

² City of Spokane is a charter city (RCW 35.01.010)

auditor, as ex-officio supervisor of elections, following a city's request to call a special election, are essentially ministerial acts involving duties imposed under RCW 29A.04.216 and placement of the ballot title on the ballot pursuant to statutory guidelines under chapter 29A.36 RCW.

The authority of county auditors' to decide whether or not to place a request from a city on the ballot is very limited. In Washington, courts have acknowledged county auditors' authority to review a ballot measure is limited to whether it meets the proper form and whether it is not so broad as to allow determination of the legality of the content. *Save Our State Park v. Hordyk*, 71 Wn. App. 84, 92, 856 P.2d 734, 739 (1993). In *Hordyk*, the court upheld a determination that the Clallam County Auditor did not have authority to determine the legality of an initiative.

It can easily be argued that measures determined to contain illegal language are invalid and void, and should not be placed before electorate for a vote as it merely increases the costs of elections and creates unnecessary confusion. Nonetheless, Title 29A RCW and Title 434 WAC, as well as chapter 36.22 RCW contain no authority for a county auditor to sua sponte remove a city measure from a ballot.

Consequently, as held in *Hordyk*, it is up to the courts to enjoin measures containing illegal provision from appearing on a ballot.

Consequently, when the trial court determined the Initiatives were void, an Order enjoining the Spokane County Auditor from placing the Initiative on the November 5, 2013 General Election Ballot was not only appropriate but necessary.

Even if this Court were to determine that some or all of the provisions contained in the Initiative were valid and to be placed on a ballot, Envision Spokane's request for an Order instructing the Spokane County Auditor to do so in the last sentence of the last paragraph on the last page of Envision Spokane's Opening Brief is misdirected. If this Court were to determine there are valid parts of the Initiative that were improperly enjoined from appearing on the 2013 General Election ballot, the courts needs to direct the City of Spokane, and not the Spokane County Auditor, to place them on the next available ballot. The Spokane County Auditor has no legal duty or discretion to call an election and prepare a ballot title for the City of Spokane. Preparation of ballot titles and passing resolutions calling for an election on city measures are all imposed on the municipality under Title 29A RCW, Title 35 RCW and the City of Spokane Municipal Code.

V. CONCLUSION

For the above stated reasons and in the interest of justice, if this Court determines portions of the Initiative should appear on the next available ballot, any such Order is directed to the City of Spokane.

Respectfully submitted this 5th day of February, 2014.

STEVEN J. TUCKER

Prosecuting Attorney

A handwritten signature in black ink, appearing to read "D. Catt", is written over a horizontal line.

Dan L Catt, WSBA# 11606

Deputy Prosecuting Attorney

Attorneys for Spokane County Auditor

DECLARATION OF SERVICE

On the 5th day of February, 2014, I caused to be served a true and correct copy of the foregoing document by Email to the following:

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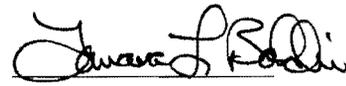
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I hereby declare under the penalty of perjury and the laws of the State of Washington that the above statements are true.

Date: February 5, 2014 Place: Spokane, WA


(Signature)