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KEVIN STOCK
COUNTY CLERK
NO: 15-2-08040-2

The Honorable Frank E. Cuthbertson
Hearing Date: 5/8/15
Hearing Time: 1:30 PM

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

IN THE MATTER OF:

NO. 15-2-08040-2

THE RECALL OF TROY X.
KELLEY, AUDITOR OF THE STATE
OF WASHINGTON.

RESPONSE TO MR. KNEDLIK'S
MOTION FOR JUDICIAL
DETERMINATIONS

I. RELIEF REQUESTED

The underlying action was commenced pursuant to RCW 29A.56.130. It seeks this Court's determination of the sufficiency of recall charges against Washington State Auditor Troy Kelley (Auditor Kelley). It seeks no other determination. The proponent of recall, Will Knedlik (Mr. Knedlik) has filed a motion which exceeds the scope of the question properly before this Court.¹ Auditor Kelley respectfully requests this Court deny Mr. Knedlik's motion.

¹ For ease of reference, Mr. Knedlik's motion is referred to simply as "Motion for Determination." Mr. Knedlik captioned his motion, in full, as a:

Motion For Judicial Determinations That A Constitutional-and-Statutory Vacancy In The Office Of Washington State Auditor Has Legally Existed From January 16, 2013, And That Said Office Has Been Unlawfully Occupied By A Pretender At All Times Since Then, Through False Pretenses, Including An Oath of Office Falsely Undertaken By An Usurper In Bad Faith, Either By Means Of Willful Violation Of Article III, Section 24 Of The Washington State Constitution So As To Disqualify Him, Or Else Perjuringly, All Subject To A Reservation Of Rights To Recover State Monies From Troy X. Kelley

Motion for Determination at 1.

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II. ARGUMENT

The Petition bringing this action before the Court seeks a ruling on the sufficiency of Mr. Knedlik's proposed recall charges and approval of the proposed ballot synopsis relevant to those charges. RCW 29A.56.140. Mr. Knedlik's Motion for Determination relates to neither of those issues.² Instead, Mr. Knedlik's Motion for Determination seeks to inject two unrelated requests for relief into this action.

First, Mr. Knedlik asks this Court to declare the office of State Auditor vacant, and say that it has been vacant since the beginning of Auditor Kelley's term. Mot. for Determination at 2. Second, Mr. Knedlik seeks to "reserve" the "right" to recover the salary paid to Auditor Kelley since he assumed office. *Id.* The only issue properly before the Court, however, is whether Mr. Knedlik's proposed recall charges are sufficient to permit Mr. Knedlik to proceed to the next stage of the recall process—seeking signatures to qualify to the ballot the question of whether Auditor Kelley should be recalled. RCW 29A.56.140 (describing issues presented to the Court in a recall action); *see also* RCW 29A.56.150 (describing requirement for petition of registered voters to qualify a proposed recall to the ballot).

The Court in a recall action is merely called upon to act as a "gatekeeper" to determine whether the charges are sufficient to proceed. *In re Robinson*, 156 Wn.2d 704, 707, 132 P.3d 124 (2006). The elected official is not actually removed from office by way of recall unless and until the voters decide to do so through an election. RCW 29A.56.260. Mr. Knedlik's request cannot be injected into this case because it is neither within the scope of a recall action under RCW 29A.56.140, nor within the scope of the petition that commenced this action. *See Pacific Northwest Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006).

² The Civil Rules specify that the issues properly before the Court consist of those claims for relief set forth in a complaint or petition, together with any affirmative defenses, counterclaims, or cross claims that the parties raise by appropriate pleading. CR 7; *see also* CR 8 and CR 12.

1 Neither Mr. Knedlik's citation to RCW 29A.56.270 nor his reference to the Petition's
2 general request for "other" relief is sufficient to place the new relief he now requests before
3 the Court. The cited statute merely authorizes the Court to compel certain actions "in relation
4 to the recall." RCW 29A.56.270. A request to declare the office vacant is not an action in
5 relation to the recall, because a recall proceeding does not directly remove the officer from
6 office but rather simply determines the sufficiency of the charges. RCW 29A.56.210
7 (providing for a recall election). And a party cannot inject a new issue into a case simply by
8 inserting the issue into a brief "and contending it was in the case all along." *Dewey v. Tacoma*
9 *School Dist. No. 10*, 95 Wn. App. 18, 26, 974 P.2d 847 (1999).

10 III. CONCLUSION

11 This Court should deny Mr. Knedlik's motion because it seeks relief not properly
12 before the Court in a recall action.

13 DATED this 6th day of May, 2015.

14 ROBERT W. FERGUSON
15 Attorney General

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17 STACIA E. HOLLAR, WSBA No. 15546
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22 Proposed Charge #2

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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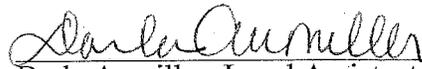
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 14th day of May, 2015, at Olympia, Washington.


Darla Aumiller, Legal Assistant