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Court Action Filed by Hailey City Officials on Voter Adopted Marijuana and Hemp Ordinances

(Hailey, Idaho) – Mayor Rick Davis, City Councilmen Don Keirn and Chief of Police Jeff Gunter recently filed a Declaratory Judgment action alleging that the three marijuana initiatives passed in the November 2007 general election are illegal. The lawsuit primarily alleges that the three initiatives are illegal because they are contrary to the general laws of the State of Idaho and the United States.

At the time the initiatives were presented to the voters, the City believed that the initiatives were contrary to the general laws of the State of Idaho. Even though all City officials shared this belief, the City was mandated by Idaho Supreme Court precedent to place the initiatives on the ballot. The rule in Idaho is that even patently illegal initiatives must be placed on the ballot in order to allow voters to express their political belief regarding any particular law, legal or illegal.

As a political subdivision of the State, the City is prohibited from enacting laws, including those passed by initiative, that are contrary to general State law. However, the Mayor and the entire City Council, serving in their executive and legislative roles respectively, believe that neither the Mayor nor City Council are the proper members of the government to declare the initiatives legal or illegal. The only governmental authority that can rightfully declare laws legal or illegal is the court, or judicial branch of government. The courts have been responsible for deciding whether laws are legal or illegal since the early days of the Nation.

Mayor Rick Davis, City Councilmen Don Keirn and Chief of Police Jeff Gunter, through their attorney, R. Keith Roark, will advocate against the initiatives arguing their illegality. The City of Hailey, through its attorney Ned Williamson, will defend the initiatives in court. Ultimately, the court will decide the outcome. Once the court issues its decision, City officials will then decide what, if any, action is appropriate. If the initiatives are not in violation of State law, the City will likely be in the position of respecting the will of the voters and the initiatives will be upheld. On the other hand, if the initiatives are illegal, then the City will likely repeal the initiatives on the basis that upholding illegal acts would be contrary to the oath taken by the Mayor and each City Council member to uphold the laws of the State of Idaho and United States.

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