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# Guzman v. Piercy Supplemental Respondent's Brief Dckt. 39708

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ISB #5587

Attorneys for Defendant/Appellant Jennifer Sutton

IN THE SUPREME COURT OF THE STATE OF IDAHO

LUIS J. GUZMAN,

Plaintiff/Defendant/Respondent-  
Cross-Appellant,

v.

DALE PIERCY, individually,

Defendant/Plaintiff/Respondent/  
Cross-Appellant,

CANYON COUNTY,

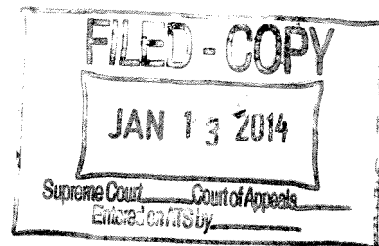
Defendant-Respondent,

JENNIFER SUTTON, individually,

Defendant/Respondent/Cross-  
Appellant.

Docket No. 39708

SUPPLEMENTAL BRIEF OF  
RESPONDENT/CROSS-  
APPELLANT JENNIFER SUTTON



**I. INTRODUCTION**

The recollection of counsel is that one member of this Court at oral argument on December 5, 2013, stated that *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930) holds that statutes of limitation do not apply to ordinances that are void. Respondent

Sutton contends that the case is distinguishable. If not distinguishable, the case should be overruled.

## II. ARGUMENT

The rule pronounced in *Continental Oil Co.*, only applies to unconstitutional statutes. This Court, presented with a challenge to a zoning law plaintiff contended violated various constitutional provisions, noted the general rule in 1930 was that “[a]cquiescence in an unconstitutional statute for many years will not render it valid.” *Id.*, 49 Idaho at 89, 286 P. at 357 (citations omitted). The Court then noted, citing a 1916 Washington case that also dealt with an allegedly unconstitutional statute, that “[i]f the ordinance was invalid when passed in 1920, lapse of time, however long, will not render it valid, and the statutes of limitation cannot be invoked.” *Id.*, citing *State ex rel. Warson v. Howell*, 92 Wash. 540, 159 P. 777 (1916).<sup>1</sup>

The rule applied in *Continental Oil Co.*, is only stated in the context of allegedly unconstitutional statutes. The constitution – whether state or federal – is the supreme law of the land. Accordingly, it is logical that a challenge to the constitutionality of a statute cannot be defeated by a statute of limitations.

There is no indication that the rule of *Continental Oil Co.*, applies to statutes or ordinances that are constitutional yet procedurally suspect. The case is therefore inapposite and distinguishable. The only case directly on point is *Canady v. Coeur d’Alene Lumber Co.*, 21 Idaho 77, 120 P. 830 (1911), which plainly applied the statute of limitations in precisely the situation presented by this case: an ordinance challenged on the basis of procedural irregularities

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<sup>1</sup> The Washington Supreme Court in *State ex rel. Warson* went on to uphold the act challenged in that case in spite of its unconstitutionality because of the lapse of time.

in its enactment. Sutton contends *Canady* applies to this case and bars Piercy's challenge to the 1982 herd district, whether the applicable statute of limitations is Idaho Code §5-224 or §31-857.

To the extent that this Court is of the view that *State ex rel. Warson v. Howell*, 92 Wash. 540, 159 P. 777 (1916), holds that a void statute or ordinance – no matter how old – can never be defeated by a statute of limitations, this Court should closely review the case, which does not appear to make the holding which this Court contended it made in 1916. There is no pin cite to *State ex rel. Warson*, and no holding in the case that statutes or ordinances that were enacted pursuant to flawed procedures are immune to a statute of limitations defense.

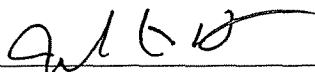
If in this Court's view this was its holding – rather than the narrower holding explained above – Sutton requests that the Court overrule *Continental Oil Co.* There is no precedent for that holding in this Court's cases, and *State ex rel. Warson* does not appear to make the holding this Court contends it made close to 100 years ago.

### III. CONCLUSION

*Continental Oil Co.*, only applies to allegedly unconstitutional statutes. It is inapplicable to the present case. This Court should not adopt a rule that would permit civil and criminal defendants to avoid the application of statutes and ordinances passed pursuant to flawed procedures. That is a Pandora's Box that should remain closed.

DATED this 14 day of January, 2014.

ELAM & BURKE, P.A.

By:   
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Attorneys for Defendant/Respondent/Cross  
Appellant Jennifer Sutton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15<sup>th</sup> day of January, 2014, I caused a true and correct copy of the foregoing document to be served as follows:

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