

FILED
KATHY MARTIN
COUNTY CLERK

2022 SEP 23 PM 12:42

WALLA WALLA COUNTY
WASHINGTON

By *Almer*

22-2-00568-36
SMCMP 1
Summons and Complaint
13144231



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

R. L. MCFARLAND, an individual,

Plaintiff,

vs.

GREGORY A. TOMPKINS, an individual
and member of the Walla Walla County
Board of Commissioners, TODD L.
KIMBALL, an individual and member of
the Walla Walla County Board of
Commissioners, and JENNIFER R.
MAYBERRY, an individual and member
of the Walla Walla County Board of
Commissioners, and COUNTY OF
WALLA WALLA, STATE OF
WASHINGTON, a municipal corporation,

Defendants.

No. **22 2 00568 36**

SUMMONS

TO THE DEFENDANTS: A lawsuit has been started against you in the above
entitled court by R. L. MCFARLAND, plaintiff. Plaintiff's claims are stated in the written
complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating
your defense in writing, and by serving a copy upon the person signing this summons within

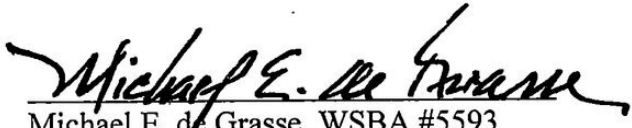
1 20 days after the service of this summons, excluding the day of service, or a default judgment
2 may be entered against you without notice. A default judgment is one where the plaintiff is
3 entitled to what they ask for because you have not responded. If you serve a notice of
4 appearance on the undersigned person, you are entitled to notice before a default judgment
5 may be entered.

6 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
7 demand must be in writing and must be served upon the person signing this summons.
8 Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court,
9 or the service on you of this summons and complaint will be void.
10

11 If you wish to seek the advice of an attorney in this matter, you should do so promptly
12 so that your written response, if any, may be served on time.

13 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the
14 State of Washington.

15 Dated this 23rd day of SEPTEMBER, 2022.

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18 Michael E. de Grasse WSBA #5593
19 Counsel for Plaintiff
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WALLA WALLA COUNTY
WASHINGTON
By *Palmer*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WALLA WALLA

R. L. MCFARLAND, an individual,

Plaintiff,

vs.

GREGORY A. TOMPKINS, an individual
and member of the Walla Walla County
Board of Commissioners, TODD L.
KIMBALL, an individual and member of
the Walla Walla County Board of
Commissioners, and JENNIFER R.
MAYBERRY, an individual and member
of the Walla Walla County Board of
Commissioners, and COUNTY OF
WALLA WALLA, STATE OF
WASHINGTON, a municipal corporation,

Defendants.

No. **22 2 00563 36**

COMPLAINT FOR VIOLATION OF
OPEN PUBLIC MEETINGS ACT

PLAINTIFF ALLEGES:

1. The plaintiff, R. L. MCFARLAND, is an individual, domiciled in the County of Walla Walla, State of Washington.
2. The individual defendants, GREGORY A. TOMPKINS, TODD L. KIMBALL, and JENNIFER R. MAYBERRY, are individuals and, at all times material hereto, were members of the Walla Walla County Board of Commissioners.

1 3. The individual defendants are all domiciled in the County of Walla Walla, State of
2 Washington.

3 4. The defendant COUNTY OF WALLA WALLA, STATE OF WASHINGTON, is a
4 municipal corporation organized and operating as the governing body of the County of Walla
5 Walla, State of Washington.

6 5. Venue in the County of Walla Walla, State of Washington in this case is proper.

7 6. The plaintiff brings this action as a result of violations of the Washington State
8 Open Public Meetings Act by the individual defendants, as provided by RCW 42.30.120.

9 7. On January 4, 2021, in the course of a regularly scheduled meeting of the Walla
10 Walla County Board of Commissioners, the defendant Tompkins, as chair of the Board,
11 initiated a discussion prompted by his receipt of an electronic letter from an organization
12 calling itself "We of Liberty." No individual was identified as the sender or author of this
13 electronic letter. The electronic letter from "We of Liberty" asked for support in its efforts to
14 limit the power of the governor of the State of Washington, particularly with respect to
15 problems arising from the COVID-19 pandemic and related vaccination programs and
16 requirements. "We of Liberty" planned to demonstrate in Olympia, Washington on January
17 10, 2021, to show support for legislative action limiting the governor's powers.
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19 8. It appears that "We of Liberty" was supportive of or affiliated with other, similar
20 groups that, among other things, asserted that Joseph R. Biden had not been duly elected
21 President of the United States.
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9. None of the materials received by the defendant commissioners from "We of Liberty" was provided at the January 4, 2021, meeting to the public. None of the materials so received was provided by the defendants to the public, at any time after January 4, 2021.

10. The discussion of the communication from "We of Liberty" was not on the agenda of the January 4, 2021, meeting of the Walla Walla County Board of Commissioners.

11. In the course of the regularly scheduled meeting of the Walla Walla County Board of Commissioners on January 4, 2021, a consensus of the commissioners was expressed by them to draft a letter in support of the aims of "We of Liberty."

12. At a special meeting of the Walla Walla County Board of Commissioners on January 7, 2021, formal and final action was taken with respect to the "We of Liberty" matter. Specifically, a motion to draft a letter to the governor of the State of Washington was passed on a vote by the individual defendants.

13. The action taken by the individual defendants at the special meeting of January 7, 2021, was not an item on the published agenda of that meeting. No notice of the business concerning "We of Liberty" was provided, in any form, to the public.

14. As a result of the action taken at the special meeting of January 7, 2021, letters were sent to Governor Jay Inslee and to Senator Perry Dozier, Representative Skyler Rude, and Representative Mark Klicker from the Walla Walla County Board of Commissioners. Copies of those letters are attached hereto.

15. The minutes of the special Board of Commissioners meeting of January 7, 2021, states that there was a consensus of the Board of Commissioners to draft a letter to the Walla

1 Walla Union-Bulletin to clarify their position concerning "We of Liberty." It appears that no
2 letter of this type was drafted or sent.

3 16. After the special board of commissioners meeting of January 7, 2021, no further
4 discussion of the "We of Liberty" matter was had at any public meeting before the letters
5 were sent.

6 17. The above-described action by the individual defendants violated the Washington
7 State Open Public Meetings Act for, *inter alia*, lack of notice. Therefore, the action is null and
8 void.

9 18. The plaintiff should have a decree against the defendants, in accordance with
10 RCW 42.30.060, holding that the above-described action is null and void.

11 19. The plaintiff should have judgment against the individual defendants, in
12 accordance with RCW 42.30.120 for civil penalties, together with an award of his costs,
13 disbursements, expenses of this litigation, and attorney fees.

14 20. The proceeds of any recovery by the plaintiff against the defendants that exceeds
15 his costs, disbursements, expenses of this litigation, and attorney fees, are hereby assigned to
16 the County of Walla Walla.
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19 WHEREFORE, plaintiff prays for a decree and judgment of this Court against the
20 defendants in accordance with the foregoing allegations, awarding the plaintiff judgment
21 against the individual defendants of a civil penalty, nullifying the action taken in violation of
22 the Open Public Meetings Act as described above, awarding the plaintiff his costs,
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disbursements, expenses of this litigation and attorney fees, and granting such other and further relief as the Court deems just and equitable.

Dated this 23rd day of September, 2022.

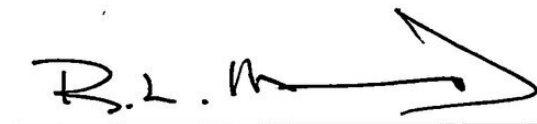

Michael E. de Grasse WSBA #5593
Counsel for Plaintiff

VERIFICATION

R. L. McFarland under penalty of perjury pursuant to the Laws of the State of Washington, RCW 9A.72.085, states as follows:

I am the plaintiff in the above-captioned cause. I have read the allegations in the foregoing complaint and hereby affirm that they are true.

Dated this 23rd day of September, 2022.


R. L. McFarland

**COUNTY OF WALLA WALLA
STATE OF WASHINGTON
BOARD OF COUNTY COMMISSIONERS**

January 7, 2021

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re Roadmap to Recovery Plan

Dear Governor Inslee,

Walla Walla County appreciates the State's intent to reopen sectors of the economy while safeguarding against the effects of the Covid-19 pandemic. Our local small businesses are at a precipice.

However, the "Roadmap to Recovery" Plan released on January 5 appears deeply flawed, both in its development and its execution.

First, the County, which operates as the Local Board of Health under RCW 70.05, was not consulted prior to the release of this plan. Decisions of this magnitude should be carefully and publicly deliberated through a legislative process. Creating "Regions" for public health metrics based only on regions set by Department of Health for Emergency Medical Services (EMS) is inappropriate. RCW 70.168.110 states that the regions are "to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care." The EMS statute was not intended to lump counties together for public health purposes, which are governed by a separate statute.

Each of the six counties have a variety of public health advantages and disadvantages. For example, Walla Walla County has the advantage of relatively small population, but has the disadvantage of having approximately 22.5 percent of its positive cases emanate from the Washington State Penitentiary. Walla Walla County has an advantage of having robust partnerships with its primary hospital, Providence St. Mary Medical Center, and its local government partners. Early in the pandemic, Walla Walla County, the Port of Walla, Fire District 4 and the Cities of Walla Walla and College Place used local funds to assist in purchasing rapid testing equipment for Providence St. Mary Medical Center. The City of Walla Walla, the County of Walla Walla and non-profit entities have partnered to provide increased health measures at the sleep center. Providence St. Mary Medical Center has created additional bed space, and partnered with the County to provide a quarantine/isolation facility. A regional system eliminates the impact of these local efforts.

Roadmap to Recovery Plan

Walla Walla County has insisted throughout this pandemic that each county be treated according to its own local circumstances. Distant locales should not dictate what occurs here. The "Roadmap to Recovery" does exactly the opposite. Walla Walla County has a much smaller population than Yakima County and Benton County. The Tri-Cities area has a population of nearly 300,000. The City of Yakima is more than 130 miles away from the City of Walla Walla. Ellensburg is nearly three hours away on a sunny day. Whether Walla Walla County moves forward to "Phase 2" will be entirely dependent on what circumstances are occurring in distant, larger populated counties. Our Health Department works hard, but our staff have no ability to contain outbreaks, monitor for best practices, assist businesses or conduct contact tracing in Cle Elum.

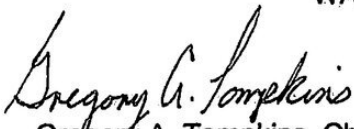
Furthermore, the data metrics that an entire region must meet before moving to "Phase 2" appear arbitrary. Most concerning is the reliance on a 10 percent test positivity rate. The State Department of Health Data Dashboard prominently states that: "Total case counts may include up to 360 duplicates; positive test results from January 5, 2021 are incomplete, as are negative test results data from November 21, 2020 through today. Thus, percent positivity (Testing tab) and case counts should be interpreted with caution." (Emphasis added)

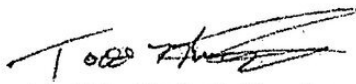
Therefore, Walla Walla County's reopening is entirely dependent on data that the State admits is potentially inaccurate. Additionally, testing positivity data is potentially skewed by factors outside of the control of Walla Walla County or its residents. Is there a prison outbreak? Are people getting tests due to symptoms and/or exposure where there is a greater likelihood of a positive test? Or are people getting tested prior to getting on airplane at an international airport, or prior to having a complex medical procedure or visiting relatives? The potential inaccuracy of the test positivity rate, the varying reasons for tests, and the overarching problem of combining six counties' test results into one "region" make the 10 percent standard unsupportable.

For the foregoing reasons we respectfully request that the plan be modified, at a minimum, to eliminate the arbitrary regional designations. Furthermore, the State should not condition reopening on data that it has admitted is incomplete.

Sincerely,

WALLA WALLA COUNTY BOARD OF COMMISSIONERS


Gregory A. Tompkins, Chair


Todd L. Kimball, Member


Jennifer R. Mayberry, Member

WALLA WALLA COUNTY PUBLIC HEALTH AND LEGISLATIVE BUILDING, 314 WEST MAIN
P.O. BOX 1506 • WALLA WALLA, WASHINGTON 99362-0316 • wwccommissioners@co.walla-walla.wa.us
PHONE: (509) 524-2505 • FAX: (509) 524-2512

District No. 1
JENNIFER R MAYBERRY

District No. 2
TODD L. KIMBALL

District No. 3
GREGORY A. TOMPKINS

**COUNTY OF WALLA WALLA
STATE OF WASHINGTON
BOARD OF COUNTY COMMISSIONERS**

January 12, 2021

Senator Perry Dozier via email perry.dozier@leg.wa.gov
Representative Skyler Rude via email skyler.rude@leg.wa.gov
Representative Mark Klicker via email mark.klicker@leg.wa.gov

Dear 16th District Legislators,

We are respectfully submitting this letter to make you aware of events that have recently happened without local elected officials' input, and legislation that is being considered that would take local elected officials out of the discussion and control.

We are requesting the Legislature pass legislation limiting the Governor's emergency powers. For example, to provide necessary checks and balances, we would support legislation requiring a special legislative session in the event an emergency lasts longer than 60 days.

We are also asking the Legislature to pass a bill prohibiting the discrimination of individuals and/or businesses who choose not to receive the Covid-19 Vaccine.

The Walla Walla County Board of Commissioners (Board) also believes the lack of the Governor's office allowing or requesting input from local elected officials on the Governor's "Healthy Washington-Roadmap to Recovery" is not how the relationship between the State Department of Health, the State Board of Health, Local Board of Health and Tribes is intended to function.¹ The Board believes that the current regulations pick winners and losers, and that regulations should be crafted to allow all businesses to safely reopen.

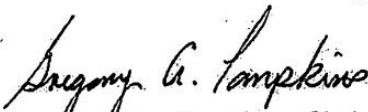
Furthermore, we are concerned that the "Roadmap to Recovery" plan arbitrarily combines Walla Walla County with distant counties, and it relies on test positivity data that may be inaccurate and influenced by local circumstances, such as necessary testing at DOC facilities. (see attached letter to Governor Inslee dated January 7, 2021). Although the State Department of Health has since updated its website, the website still states, as of January 11, 2021: "Total case counts may include up to 1,150 duplicates and negative test results data are incomplete from November 21-30, 2020 and December 28 through today. . . . Thus, percent positivity (Testing tab) and case counts should be interpreted with caution."

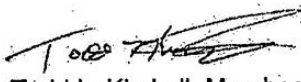
The Board also has the same concerns regarding the proposed legislation put forward regionalizing local health departments. (SB 5173 and HB 1152). The legislation is designed to eliminate local control and accountability.

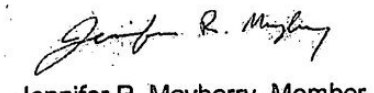
Thank you for your time, and please know we are always available to answer questions or help.

Sincerely,

WALLA WALLA COUNTY BOARD OF COMMISSIONERS


Gregory A. Tompkins, Chair


Todd L. Kimball, Member


Jennifer R. Mayberry, Member

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District No. 3
GREGORY A. TOMPKINS

¹ For an understanding of the relationship of our agencies, please read former Washington State Attorney General Rob McKenna's Legal Authority Memo originally dated October 20, 2006 and updated September 30, 2008 describing the relationship between the different agencies during a public health emergency.