

THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON COALITION FOR OPEN
GOVERNMENT, a non-profit, nonpartisan
Washington organization,

Plaintiff,

vs.

THE STATE OF WASHINGTON, a state
government, acting through THE
WASHINGTON STATE REDISTRICTING
COMMISSION, a Washington State Agency;
and SARAH AUGUSTINE, APRIL SIMS,
PAUL GRAVES, BRADY PIÑERO
WALKINSHAW, and JOE FAIN, in their
individual capacities as Commissioners of the
Washington State Redistricting Commission,

Defendants.

NO.

COMPLAINT FOR
DECLARATORY RELIEF;
WASHINGTON'S OPEN PUBLIC
MEETINGS ACT ("OPMA")
VIOLATIONS; AND
CONSTITUTIONAL ERROR

I. PARTIES

1.1 Plaintiff. Plaintiff Washington Coalition for Open Government ("WCOG") is a nonprofit, nonpartisan organization dedicated to promoting and defending the public's right to know about the conduct of government and matters of public interest. WCOG's mission is to

COMPLAINT FOR DECLARATORY
RELIEF; WASHINGTON'S OPEN
PUBLIC MEETINGS ACT ("OPMA")
VIOLATIONS; AND CONSTITUTIONAL
ERROR

 WITHERSPOON•KELLEY
Attorneys & Counselors
422 W. Riverside Avenue, Suite 1100
Spokane, Washington 99201-0300
Phone: 509.624.5265

III Branches Law, PLLC
Joan K. Mell
1019 Regents Blvd. Ste 204
Fircrest, WA 98466
253-566-2510

1 help foster the cornerstone of democracy: open government, supervised by an informed citizenry.
2 WCOG’s interest in this case stems from its work and advocacy related to fostering and
3 maintaining a transparent and open government.
4

5 1.2. Defendant State of Washington. Defendant State of Washington acting through
6 its Washington State Redistricting Commission is a “Public Agency” as defined under
7 Washington's Open Public Meetings Act (“OPMA”) RCW 42.30.020. Washington State
8 Redistricting Commission acts by and through Commissioners and staff whose acts and
9 omissions are the acts and omissions of the State of Washington - Washington State Redistricting
10 Commission.
11

12 1.3. Washington established its State Redistricting Commission under the
13 Constitution of the State of Washington, Article II, Section 43, and by statute under RCW 44.05,
14 et. seq. Washington’s Redistricting Commission is charged with a statutory duty to “Hold open
15 meetings pursuant to the open public meetings act, chapter 42.30 RCW.” RCW 44.05.080(4),
16 and to otherwise be transparent as provided in its rules.
17

18 1.4. Defendant Commissioners. In 2021 Washington’s Legislature appointed April
19 Sims, Paul Graves, Brady Piñero Walkinshaw, and Joe Fain, and they selected Sara Augustine
20 as non-voting Chair to serve as the Commissioners of the Washington State Redistricting
21 Commission. At all material times to this matter, the named Commissioners were acting
22 personally and in their official capacities subject to individual liabilities pursuant to RCW
23 42.30.120.
24
25
26
27
28

1 **II. JURISDICTION AND VENUE**

2 2.1 Washington state courts have jurisdiction over this action pursuant to RCW
3 42.30, *et. seq.*, and RCW 7.24, *et. seq.* Washington’s Supreme Court has original jurisdiction to
4 hear and decide all cases involving congressional and legislative redistricting, Wash. Const. art
5 II § 43. This matter involves congressional and legislative redistricting.
6

7 2.2 Venue is proper pursuant to RCW 4.92.010(5).
8

9 **III. FACTS**

10 3.1 Washington's congressional and legislative districts are redrawn every ten years
11 pursuant to the Washington State Redistricting Act, RCW 44.05, *et. seq.*

12 3.2 The Washington State Redistricting Act specifies that: “A redistricting
13 commission shall be established in January of each year ending in one to accomplish state
14 legislative and congressional redistricting.” RCW 44.05.030.

15 3.3 The Washington State Redistricting Commission is charged, in part, “to carry out
16 the provisions of Article II, section 43 of the state Constitution.” RCW 44.05.080. Pursuant to
17 Article II, section 43 of the state Constitution, the Legislature established the Commission to
18 “provide for the redistricting of state legislative and congressional districts.”
19

20 3.4 Pursuant to statute, the Legislature appointed April Sims, Paul Graves, Brady
21 Piñero Walkinshaw, and Joe Fain as the four voting Commissioners to the Washington State
22 Redistricting Commission. At least three of these voting members constitute a quorum. On
23 January 27, 2021, Washington State Redistricting Commission held its first meeting. On January
24 30, 2021, Washington State Redistricting Commission held its second meeting where the
25
26
27
28

1 Commissioners selected Sarah Augustine as the fifth, non-voting Commissioner and Chair of
2 the Washington State Redistricting Commission.

3 3.5 From February 21, 2021 through November 2021, the Washington State
4 Redistricting Commission held fifteen special meetings. From June 21, 2021 to November 2021,
5 the Washington State Redistricting Commission held six Regular meetings: June 21, July 19,
6 August 16, September 20, October 18, and November 15.

7
8 3.6 Pursuant to Constitution of the State of Washington, Article II, Section 43 and
9 RCW 44.05.100, the Washington State Redistricting Commission was required to approve, by a
10 vote of three, a districting plan for Washington's legislative and congressional districts by no
11 later than November 15, 2021. Washington State Redistricting Commission was also required to
12 submit the approved plan to the legislature by November 15, 2021. RCW 44.05.100.

13
14 3.7 As of November 15, 2021, Washington State Redistricting Commission did not
15 reach a consensus. It did not approve publicly a legislative and congressional redistricting plan
16 nor did it transmit such an approved plan to the Legislature before midnight.

17
18 3.8 On November 15, 2021, at approximately 7:00 p.m., Washington State
19 Redistricting Commission convened an internet Zoom meeting for the purposes of "Discussion"
20 and "Action" on adoption of its redistricting plan and transmittal of that plan to the Legislature
21 in conformance with its duties set forth at RCW 44.05.080. All Commissioners were present
22 and in attendance within the internet Zoom platform at the commencement of its regular meeting
23 on November 15, 2021. **Appendix D** (Meeting Minutes) and **Appendix E** (Transcript).

24
25 3.9 According to Commissioner Augustine's sworn statement provided to the
26 Supreme Court of the State of Washington, when the meeting began on November 15, 2021,
27

1 there were still several unresolved issues that remained “in dispute.” Specifically, “the
2 composition of legislative districts 28, 44, and 47,” had not yet been determined. **Appendix G**
3 (Augustine Statement).

4
5 3.10 One minute twenty-eight seconds into the meeting, the Chair advised that the
6 Commission would deviate from the agenda, move into “caucus” meetings, and forgo the
7 “Discussion” item on its agenda. The Chair instructed staff to post a notice that the Commission
8 was in “caucus” and that staff would check in on the hour and half hour. The Chair did not
9 disclose the purpose for the “caucus”, nor did she disclose what the topic of the “caucus” was
10 nor how the “caucus” would deliberate. She did not disclose who was in the caucus or where
11 the caucus was meeting or how the Commissioners were communicating. The Commissioners
12 exited the public platform of the Zoom meeting. Whether the caucus was a meeting of the
13 Commissioners collectively or was divided along partisan lines with the Chair and Staff
14 communicating with both was not disclosed to the public in the public meeting. From comments
15 made during the check-ins, it was apparent Commissioners were deliberating with one another
16 across party lines.
17
18

19 3.11 The entire publicly observable Commission meeting comprised 31:21 minutes
20 from 7:00 p.m. on November 15 to the time of adjournment at 12:01:36 a.m. on November 16,
21 2021.
22

23 3.12 From 7:00 p.m. to 11:59:28 p.m. the Commission deliberated offline out of the
24 public forum except for a brief discussion for approximately 11.28 minutes when there was no
25 measure before it for a vote. For more than four hours the Commission deliberated secretly in
26
27
28

1 private. Chair Augustine omitted and failed to account for this four plus hours to the Supreme
2 Court when responding to its Order for time specifics on its deliberations.

3 3.13 At various times during the check-ins, the Chair explained that they were dealing
4 with “technical issues.”
5

6 3.14 During the second check-in with the public, the Commissioners returned to the
7 public platform where the Chair “recognized” that there was “confusion . . . about what is
8 actually going on.” She stated that the Commissioners were “now in the time where [the
9 Commissioners were] looking at maps.” The Commissioners did not give the public access to
10 the Commissioners deliberations over any maps. The maps were not screen shared or otherwise
11 displayed nor disclosed publicly. The Commissioners were admittedly discussing the maps and
12 districting decisions outside the presence of the public.
13

14 3.15 During this second check in with the public, Commissioner Walkinshaw
15 disclosed that the Commissioners were engaging in private discussions about how the
16 Commissioners would draw the maps. He stated: “we have been in discussions and working on
17 issues around keeping communities of interest together, thinking about cities’ splits, really
18 looking carefully at maps, thinking about the requests that have come in from public input to
19 make sure that those key priorities are integrated and adapted.”
20
21

22 3.16 Also, during this check-in on the same public platform, Commissioner Fain stated
23 that the goal of the non-public negotiations was to “put something out here for folks to take a
24 look at.”
25

26 3.17 The Commissioners again left the public platform.
27
28

1 3.18 After a long absence, the Commissioners then reappeared into the public platform
2 for a third “break” to check-in with the public audience. The Chair stated that the Commissioners
3 had been reviewing final congressional and legislative maps. With this concession, it was
4 apparent to the public observers that the disputed and unresolved issues that the Commission
5 was to be deliberating in public to reach a final outcome were being negotiated in private among
6 the Commissioners. The Commissioners were performing their redistricting work secretly. The
7 Chair stated that the maps staff were creating for Commissioner approval would be made
8 available later that night. The Commissioners then left the public platform.
9
10

11 3.19 Much later, the Commissioners reappeared again into the public platform for a
12 fourth “break” to check-in with its audience.

13 3.20 The Chair, presumably realizing that she had disclosed that the Commission was
14 constructing its maps and designating agreed upon boundaries in private, “clarified” her earlier
15 statement by attempting to retract the plain meaning of what she had said. She commented that
16 when she announced the Commission would have its maps posted on the website “sometime
17 tonight” she was “not saying anything other than that.” She did not deny that the Commissioners
18 were building consensus together outside the public. From the Commissioners updates, it was
19 apparent that the deliberations over the maps illustrated continuing conflicts over boundaries that
20 the Commissioners discussed without the public present. It was also apparent from these
21 updates, that the Commissioners never reached any consensus on boundaries to include up to the
22 time they voted to adopt a congressional and legislative districting plan. The Commissioners
23 conceded there was no final map designating agreed upon boundaries when they voted in public.
24
25
26
27
28

1 3.21 During check-in, Commissioner Sims stated that they were reviewing maps and
2 double-checking lines. Again, admitting that the negotiations and decision making was
3 happening privately where the public could not observe its commissioners in action.
4

5 3.22 Commissioner Fain openly confessed that they were deliberating about where to
6 put Mercer Island. The Commissioners’ thought processes and weighing of the decisive factors
7 was of public importance. The Commissioners deliberations on where the boundaries were
8 properly designated was not a “technical” issue nor a de minimus slight of the public’s interest
9 in observing its governance in action.
10

11 3.23 When the Commissioners returned to the public platform the fifth time, the Chair
12 announced 17:09 minutes into the public meeting that they were going to begin the “discussion”
13 portion of the meeting. The discussion ended at 28:09 minutes into the public meeting. In those
14 eleven minutes, the Commission explained through various comments that they had yet to reach
15 any consensus. They did not attempt to reach any consensus publicly. At that time, they did not
16 have before them any motion to deliberate.
17

18 3.24 Specifically in that discussion, Commissioner Fain had a “couple questions” for
19 Commissioner Walkinshaw. He asked about the boundary between the Ninth and Tenth districts.
20 In response, Commissioner Walkinshaw conceded that they had already been discussing that
21 boundary outside the public platform in secret and would continue to do so. He stated: “I think
22 we’re, you and I, are continuing, I think in public, reaching to work on what that southern
23 boundary is. Um, I think continue to work on it.” But the Commissioners did not publicly ever
24 work on the “southern boundary” in any public discussion.
25
26
27
28

1 3.25 The Commissioners returned to caucus with no actual public deliberations to take
2 a public position or action on redistricting.

3 3.26 Finally, upon ending the discussion at 28:32 into the meeting per the time stamp
4 of the TVW recording from the Commission’s website link, the Chair asked to “caucus” for
5 another “five” minutes. Upon reconvening at 28:42 into the publicized meeting as recorded, the
6 Chair announced they were moving into the “Approval” item on its agenda. At that time without
7 any common documents apparently before them and without any publication of any district
8 specific designations and having just conceded they had not reached consensus, the Chair
9 “wondered” whether there was a motion to adopt the final congressional plan. Commissioner
10 Fain said: “so moved”. The Chair asked for a second. There was a “second.” The Chair did not
11 open the motion up for discussion. The Chair immediately proceeded to call the question and
12 asked: “All in favor?” The public could hear Commissioners saying “Aye”, but the Chair did
13 not poll the Commissioners’ vote. The Chair repeated the same process on a final legislative
14 plan, except that the Commissioners had not voted affirmatively prior to the time deadline. The
15 affirmative vote of the Commissioners was recorded after midnight on the motion to approve the
16 “final legislative plan” without the measure being discussed. Again, after its deadline to act, the
17 Chair asked whether she had a motion to approve the Resolution adopting the redistricting plan.
18 The Commissioners so moved and seconded and voted affirmatively without discussion. Next
19 the Chair asked whether there was a motion to approve a transmittal letter. The Commissioners
20 so moved, seconded, and affirmed without discussion.

21 3.27 The Supreme Court ordered the Commission disclose a detailed timeline.

22 **Appendix F** (Supreme Court Order). In the Chair’s Declaration to the Supreme Court, she states

1 under oath that the Commissioners signed the Resolution prior to the Commission moving and
2 having before it the Resolution. If Paul Graves signed the Resolution at 11:51 p.m. and Joe Fain
3 at 11:59 p.m. on the 15th, they signed before the Resolution came before the body on the 16th.
4 She stated that the Resolution had previously been before the Commission on October 18, but
5 the “Resolution” published at that time was incomplete and a form without substantive content.
6

7 **Appendix B** (Oct. 18 Published Proposed Resolution).

8 3.28 Apparently, the Commission was attempting to hurry up and vote before the
9 deadline, but it did not make it.
10

11 3.29 The Commission did not finally resolve district boundaries when they voted. Any
12 maps drawn, staff apparently crafted in secret behind closed doors or in a break-out room or
13 platform wholly inaccessible to the public. The public had no opportunity to see or hear what
14 the Commissioners were voting to approve. It was apparent that the Commissioners similarly
15 had no common understanding of what it was they were voting to approve. The Commissioners
16 did not reach a consensus in public on redistricting. On November 24, 2021, the Commission
17 published a link to its Redistricting Report and Plan. **Appendix I** (Report and Plan).
18

19 3.30 Commissioner Augustine offered the following explanation of what had occurred
20 after the deadline for the Commission to act: “At 12:13 a.m. on Tuesday, November 16, 2021,
21 the Commission’s Executive Director, Lisa McLean, transmitted by email the transmittal letter
22 and resolution to the Secretary of the Senate and the Chief Clerk of the House. . . Ms. McLean’s
23 email did not attach final maps, or the written legal description of each district, because the maps
24 had not yet been finalized at that time. . . It is my understanding that, after the public meeting
25
26
27
28

1 ended, caucus staff finalized the congressional district map in accordance with the
2 Commissioners' agreement."

3 3.31 These admissions make it clear that the Commissioners held a pro forma, last-
4 minute vote to fabricate the perception of a public consensus when the Commission was still
5 undecided as to the final boundaries, or it had reached such a consensus privately, equally
6 violative of the public's interest. When the Commission voted, it had yet to publish even among
7 themselves what they were voting to approve. Final maps did not yet exist when the vote was
8 taken.
9
10

11 3.32 Throughout the evening, the Commissioners repeatedly adjourned to "caucus,"
12 to promise that maps would be coming for the public to view and effectively admitting that they
13 were negotiating in private. At one point, Commissioner Graves said that the Commissioners
14 were frustrated with having to conduct this process subject to Washington's Open Public Meeting
15 Act. He stated: "I know this is a frustrating process, and doing [redistricting] in this way, in
16 public meetings is a ...[inaudible] and taking the discussions we have had over the last several
17 months and doing the actual clinical process of turning them into maps is a challenging process,
18 and it's 11 o'clock at night. And we are working very very hard, we probably look tired and are
19 tired."
20
21

22 3.33 Two days later, Commissioner Graves issued a press release, **Appendix J**
23 (Graves Press Statement), wherein he admitted that the Commissioners did not operate in
24 accordance with open government principles. The press release stated: "The final hours late on
25 Monday, hampered by extensive technical challenges, resulted in a five-hour public meeting
26 marked by regular breaks and confusion. 'I believe strongly in open government,' said Graves.
27
28

1 'So I am more than disappointed that the chaos Monday evening led to a lack of transparency
2 and open deliberation. We did not live up to the standard for open government that the
3 commission promised, that I expect from my government, and that the people deserve.'”
4

5 **IV. CAUSES OF ACTION**

6 The above factual allegations are incorporated into the following causes of action:

7 **Uniform Declaratory Judgments Act**

8 4.1 This Court has the power to declare the rights, status and other legal relations
9 among the parties to this matter.
10

11 4.2 Plaintiffs are interested persons under Washington’s constitution and statutes who
12 seek to obtain a declaration of rights, status or other legal relations as to the defendants pursuant
13 to the authority of the Uniform Declaratory Judgments Act, RCW 7.24 et seq.

14 4.3 A declaratory order in this matter would terminate the uncertainty and
15 controversy giving rise to the proceeding. Defendants must conform with their public duties and
16 obligations for transparency even in the face of pandemic restrictions that have forced public
17 officials to carry out their duties on internet platforms, and like remote forums. Clarity is needed
18 as to what conforms with the law and what does not when functioning remotely. Plaintiffs
19 require assurances that they will not be bound by decisions made in private, without taking any
20 position on redistricting decisions, and that future decision making will occur in conformance
21 with the law.
22

23 4.4 Plaintiffs have standing as members of the public who maintain a special
24 relationship with defendants, having observed defendants’ conduct and having heard the
25 representations of defendants that violate plaintiffs’ rights to public participation in redistricting.
26
27

1 4.5 The matters set forth are justiciable, the record having been perfected evidencing
2 the violations that may be repeated and or acted upon by the Supreme Court erroneously without
3 prompt judicial intervention as set forth on defendants’ public website.
4

5 4.6 Alternatively if not found justiciable, this matter presents questions of substantial
6 public interest as evidenced by the defendants’ public statements and the ongoing media
7 coverage of the events that warrants a final judicial outcome and hearing on the merits.
8

9 4.7 Defendants conducted business in private. Defendants failed to fulfill their
10 constitutional obligations to timely set redistricting boundaries publicly but feigned to have met
11 its obligations by voting on a measure that had been formulated and agreed upon in private, or
12 alternatively had yet to be formulated and agreed upon in private such that there was no public
13 consensus on any measure as required.
14

15 4.8 Defendants may repeat such violations because the Commission operates as a
16 state agency with staff support and depends upon staff support for continuity. In the absence of
17 corrective action and clarity on its violations, staff are likely to repeat the same errors with any
18 newly appointed commissioners in the future without prompt and immediate corrective action.
19 In addition, the issue of redistricting came before the Supreme Court where the Court expressly
20 approved the Commissions’ actions without deciding the transparency issues it knew existed.
21

22 **Appendix H** (Court’s Dec. 3rd Order).

23 4.9 Based upon the above stated allegations, plaintiffs seek any and all relief available
24 to it under Washington’s Uniform Declaratory Judgments Act to include an order declaring
25 defendants conduct a violation of Washington’s laws regarding transparency and enjoining any
26 further violations of plaintiffs’ rights or state law.
27

1 **Violation of Washington's Open Public Meetings Act**

2 4.10 Defendants are subject to Washington's Open Public Meetings Act. RCW
3 44.05.080.

4 4.11 OPMA mandates that every member of the governing body of a public agency
5 must complete training on the requirements of OPMA. RCW 42.30.205.

6 4.12 On January 27, 2021, an Assistant Attorney General gave an OPMA presentation
7 to the Commission that he conceded did not meet the statutory training requirements of OPMA.
8

9 **Appendix A (Meeting Transcript)**

10 4.13 At this presentation, Commissioners expressed their commitment to transparency
11 and acting in conformance with their public duties openly.
12

13 4.14 Defendant Commissioners did not thereafter convene to meet its statutory
14 training requirements under OPMA collectively, and upon information and belief did not do so
15 individually.
16

17 4.15 Defendant Commission and Commissioners violated OPMA's training
18 requirements.
19

20 4.16 Defendants have the express duty to "hold open public meetings pursuant to the
21 open public meetings act, Chapter 42.30."

22 4.17 Defendant Commission and Commissioners published on its website its Mission
23 and Purpose:

- 24 "In Our Process
25 • Be open, transparent, and credible
26 • Provide access to everyone and welcome all voices
27 • Grounded in statute

In Our Conduct:

- Strive for transparency...

4.18 Defendants violated their own mission statement because they were not transparent and they did not provide public access, and the Chair was deceptive about such lack of transparency in her Declaration to the Supreme Court. She omitted pertinent facts like the majority of the deliberative process and action taken occurring offline. She was incorrect about votes having been taken prior to the deadline. The Commission voted or at least took straw votes privately.

4.19 Washington's Open Public Meetings Act requires "All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter." RCW 42.30.030.

4.20 Washington's Open Public Meetings Act states: " No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void."

4.21 Washington's Open Public Meetings Act states: "No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter."

1 4.22 Washington's Open Public Meetings Act defines "meeting" as "meetings at which
2 action is taken." RCW 42.30.020; *see also Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550,
3 562, 27 P.3d 1208, 1216 (2001).

4
5 4.23 Washington's Open Public Meetings Act defines "action," as "the transaction of
6 the official business ... by a governing body including but not limited to receipt of public
7 testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions."
8 *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 562, 27 P.3d 1208, 1216 (2001).

9
10 4.24 A "meeting" can be held even when all the parties are not in the same room.
11 Simultaneous communication, electronic communication, negotiation through staff, "serial"
12 meetings with fewer members than a quorum, may all constitute "meetings" under Washington's
13 Open Public Meetings Act. *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 562, 27 P.3d
14 1208, 1216 (2001).

15
16 4.25 Defendants utilized an internet platform to conduct its activities but failed to
17 utilize that platform in conformance with its duties under OPMA.

18 4.26 On November 15, 2021, Washington State Redistricting Commission engaged in
19 secret negotiations to draft and come to agreement about the proposed legislative and
20 congressional district maps. Defendants' actions privately and inaction publicly constitutes
21 violations of Washington's Open Public Meetings Act.
22

23 4.27 Defendants did not act in a timely manner and did not reach a consensus that the
24 Supreme Court or any other entity may rely upon a valid expression of Commission action.
25
26
27



1 4.28 Defendants’ motions and corresponding votes should be deemed void or voided
2 by court order to deter against similar future violations or reliance upon such action as valid
3 when it was not. Plaintiff takes no position on the redistricting decisions made.
4

5 4.29 The individual Commissioners knew that they were violating Washington's Open
6 Public Meetings Act.

7 4.30 Plaintiffs seek an order as to these OPMA violations and corresponding sanctions
8 under the statute to enforce state transparency and to deter against repeated violations in the
9 future.
10

11 4.31 Plaintiffs have incurred attorney’s fees and costs in redressing their rights and in
12 pursuit of conformance with OPMA.

13 **Washington’s Constitution**

14 4.32 Plaintiff seeks declaratory and injunctive relief directly under Washington’s
15 Constitution.
16

17 4.33 WASH. Const. art. II § 43 provides for “Redistricting” state legislative and
18 congressional districts by Commission action.

19 4.34 The Legislature must enact laws providing for the implementation of the
20 Commission and additional standards to govern the Commission.
21

22 4.35 In 1983, the Legislature passed the Washington State Redistricting Act.

23 4.36 The Redistricting Act obligates a Commission to accomplish state legislative and
24 congressional redistricting.

25 4.37 The Legislature mandated that the Commission hold open meetings pursuant to
26 the open public meetings act, RCW 42.30.
27

1 4.38 By rule, Commission meetings shall be conducted in accordance with the Open
2 Public Meetings Act. WAC 417-01-155(4).

3 4.39 By rule, the Commission shall not adopt any redistricting plan except at a public
4 meeting WAC 417-01-155(5).

5 4.40 By statute, the Commission may not **vote** by secret ballot, RCW 42.30060. By
6 rule, the Commission shall not take **any action** by secret ballot. WAC 417-01-155(6).

7 4.41 Washington’s Open Public Meetings Act requires all meetings of the governing
8 body of a public agency be open and public, RCW 42.30.030.

9 4.42 Washington’s Open Public Meetings Act defines “meeting” to mean “meetings
10 at which action is taken...”, RCW 42.30.020(4).

11 4.43 “Action” is defined as the “transaction of the official business of a public agency
12 by a governing body including but not limited to receipt of public testimony, deliberations,
13 discussions, considerations, reviews, evaluations, and final actions, RCW 42.30.020(3).

14 4.44 Washington’s Constitution expressly provides that the Supreme Court has
15 original jurisdiction to hear and decide all cases involving congressional and legislative
16 redistricting.

17 4.45 Defendants convened a regular business meeting then conducted business and
18 acted in private, not on the public record.

19 4.46 Plaintiff Washington Coalition for Open Government seeks judicial review of the
20 Commission’s actions taken in private and secret for purposes of permanently enjoining similar
21 conduct in the future, and to declare such private and secret action a violation of Washington’s
22

1 Constitution; an improper delegation of Washington’s Legislative powers; and outside the scope
2 of any Legislative authority.

3 4.47 Plaintiff takes no position on whether the redistricting should be as the
4 Commission or Commissioners deemed proper. Plaintiff has pursued this action for purposes of
5 ensuring transparency and to enforce Washington’s laws. To the extent Plaintiff seeks to
6 invalidate defendants’ maps or measures, it is for purposes of ensuring public participation and
7 transparency, not redistricting or any redistricting outcome.
8

9 4.48 Plaintiff has no plain or speedy alterative remedies to ensure Commission
10 conformance now or into the future.
11

12 V. PRAYER FOR RELIEF

13 Wherefore, Plaintiff prays for relief as follows:

- 14 1. An order finding that defendants acted outside their authority because of their
15 inaction publicly and their actions taken privately;
- 16 2. An order declaring defendants’ private actions a violation of Washington’s
17 Constitution and Open Public Meetings Act;
- 18 3. An order enjoining future violations;
- 19 4. An order finding defendants’ votes void and unenforceable without comment on
20 the merits of the proposed or Commission’s desired redistricting decisions;
- 21 5. A civil penalty against each individual Commissioner in the amount of \$500.00,
22 pursuant to RCW 42.30.120, or, if any Commissioner has previously been found
23 to have violated Washington's Open Public Meetings Act, then a civil penalty in
24 the amount of \$1,000.00, pursuant to RCW 42.30.120;
25
26
27



- 1 6. An order mandating compliance with OPMA training requirements;
2 7. An award of Plaintiff's costs and attorneys' fees as authorized by statute or in
3 equity;
4
5 8. For such other and further relief as the Court deems just and equitable in the
6 premises.

7 Dated this 9th day of December, 2021.

8
9 WITHERSPOON • KELLEY

III BRANCHES, PLLC

10 
11 CASEY M. BRUNER, WSBA # 50168
12 *Counsel for Plaintiffs*


13 JOAN K. MELL, WSBA #21319
14 *Counsel for Plaintiffs*

15 I, MIKE FANCHER, WCOG President, have read the above Complaint and verify that the
16 factual allegations are true and correct to the best of my abilities dated this 9th day of
17 December, 2021.

18 
19 Mike Fancher, WCOG President

20 TABLE OF APPENDICES

- 21 A. Washington State Redistricting Commission January 27, 2021 Meeting Transcript
22 B. Resolution of Redistricting Congressional and Legislative Districts October 18, 2021
23 C. Washington State Redistricting Commission Meeting Agenda November 15, 2021
24 D. Washington State Redistricting Commission November 15, 2021 Meeting Minutes
25 E. Washington State Redistricting Commission November 15/16, 2021 Meeting Transcript
26 F. Washington State Supreme Court No. 27500B-675 Order November 18, 2021
27 G. Sworn Declaration of Sarah Augustine November 22, 2021

28 COMPLAINT FOR DECLARATORY
RELIEF; WASHINGTON'S OPEN
PUBLIC MEETINGS ACT ("OPMA")
VIOLATIONS; AND CONSTITUTIONAL
ERROR

 WITHERSPOON • KELLEY
Attorneys & Counselors
422 W. Riverside Avenue, Suite 1100
Spokane, Washington 99201-0300
Phone: 509.624.5265

III Branches Law, PLLC
Joan K. Mell
1019 Regents Blvd. Ste 204
Fircrest, WA 98466
253-566-2510

- 1 H. Washington State Supreme Court No. 27500B-675 Order December 3, 2021
- 2 I. Washington State Redistricting Commission 2021 Report to the Legislature
- 3 J. Statement from Redistricting Commissioner Paul Graves November 17, 2021
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28



III BRANCHES LAW, PLLC

December 10, 2021 - 1:56 PM

Filing Original Action Against State Officer

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

The following documents have been uploaded:

- OAS_Orig_Act_Against_State_Officer_20211210135308SC842464_2930.pdf

This File Contains:

Original Action Against State Officer

The Original File Name was 2021.12.10. WA Coalition for Open Govnt v. Washington Redistricting Commission - Complaint.pdf

A copy of the uploaded files will be sent to:

- serviceATG@atg.wa.gov

Comments:

WA Coalition for Open Govnt v. Washington Redistricting Commission - Complaint

Sender Name: Joan Mell - Email: Joan@3brancheslaw.com

Filing on Behalf of: Joan Kristine Mell - Email: joan@3brancheslaw.com (Alternate Email: Joan@3brancheslaw.com)

Address:

1019 Regents Boulevard, Suite 204

Fircrest, WA, 98466

Phone: (253) 566-2510

Note: The Filing Id is 20211210135308SC842464