

1  
2  
3  
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

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

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

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.*

4 2.2 Venue is proper pursuant to RCW 4.92.010(5).

5 **III. FACTS**

6 3.1 Washington's congressional and legislative districts are redrawn every ten years  
7 pursuant to the Washington State Redistricting Act, RCW 44.05, *et. seq.*

8 3.2 The Washington State Redistricting Act specifies that: “A redistricting  
9 commission shall be established in January of each year ending in one to accomplish state  
10 legislative and congressional redistricting.” RCW 44.05.030.

11 3.3 The Washington State Redistricting Commission is charged, in part, “to carry out  
12 the provisions of Article II, section 43 of the state Constitution.” RCW 44.05.080. Pursuant to  
13 Article II, section 43 of the state Constitution, the Legislature established the Commission to  
14 “provide for the redistricting of state legislative and congressional districts.”

15 3.4 Pursuant to statute, the Legislature appointed April Sims, Paul Graves, Brady  
16 Piñero Walkinshaw, and Joe Fain as the four voting Commissioners to the Washington State  
17 Redistricting Commission. At least three of these voting members constitute a quorum. On  
18 January 27, 2021, Washington State Redistricting Commission held its first meeting. On January  
19 30, 2021, Washington State Redistricting Commission held its second meeting where the  
20 Commissioners selected Sarah Augustine as the fifth, non-voting Commissioner and Chair of  
21 the Washington State Redistricting Commission.  
22  
23  
24  
25  
26  
27  
28



1           3.5     From February 21, 2021 through November 2021, the Washington State  
2 Redistricting Commission held fifteen special meetings. From June 21, 2021 to November 2021,  
3 the Washington State Redistricting Commission held six Regular meetings: June 21, July 19,  
4 August 16, September 20, October 18, and November 15.  
5

6           3.6     Pursuant to Constitution of the State of Washington, Article II, Section 43 and  
7 RCW 44.05.100, the Washington State Redistricting Commission was required to approve, by a  
8 vote of three, a districting plan for Washington's legislative and congressional districts by no  
9 later than November 15, 2021. Washington State Redistricting Commission was also required to  
10 submit the approved plan to the legislature by November 15, 2021. RCW 44.05.100.  
11

12           3.7     As of November 15, 2021, Washington State Redistricting Commission did not  
13 reach a consensus. It did not approve publicly a legislative and congressional redistricting plan  
14 nor did it transmit such an approved plan to the Legislature before midnight.  
15

16           3.8     On November 15, 2021, at approximately 7:00 p.m., Washington State  
17 Redistricting Commission convened an internet Zoom meeting for the purposes of "Discussion"  
18 and "Action" on adoption of its redistricting plan and transmittal of that plan to the Legislature  
19 in conformance with its duties set forth at RCW 44.05.080. All Commissioners were present  
20 and in attendance within the internet Zoom platform at the commencement of its regular meeting  
21 on November 15, 2021. **Appendix D** (Meeting Minutes) and **Appendix E** (Transcript).  
22

23           3.9     According to Commissioner Augustine's sworn statement provided to the  
24 Supreme Court of the State of Washington, when the meeting began on November 15, 2021,  
25 there were still several unresolved issues that remained "in dispute." Specifically, "the  
26  
27  
28

1 composition of legislative districts 28, 44, and 47,” had not yet been determined. **Appendix G**  
2 (Augustine Statement).

3 3.10 One minute twenty-eight seconds into the meeting, the Chair advised that the  
4 Commission would deviate from the agenda, move into “caucus” meetings, and forgo the  
5 “Discussion” item on its agenda. The Chair instructed staff to post a notice that the Commission  
6 was in “caucus” and that staff would check in on the hour and half hour. The Chair did not  
7 disclose the purpose for the “caucus”, nor did she disclose what the topic of the “caucus” was  
8 nor how the “caucus” would deliberate. She did not disclose who was in the caucus or where  
9 the caucus was meeting or how the Commissioners were communicating. The Commissioners  
10 exited the public platform of the Zoom meeting. Whether the caucus was a meeting of the  
11 Commissioners collectively or was divided along partisan lines with the Chair and Staff  
12 communicating with both was not disclosed to the public in the public meeting. From comments  
13 made during the check-ins, it was apparent Commissioners were deliberating with one another  
14 across party lines.  
15  
16  
17

18 3.11 The entire publicly observable Commission meeting comprised 31:21 minutes  
19 from 7:00 p.m. on November 15 to the time of adjournment at 12:01:36 a.m. on November 16,  
20 2021.  
21

22 3.12 From 7:00 p.m. to 11:59:28 p.m. the Commission deliberated offline out of the  
23 public forum except for a brief discussion for approximately 11.28 minutes when there was no  
24 measure before it for a vote. For more than four hours the Commission deliberated secretly in  
25 private. Chair Augustine omitted and failed to account for this four plus hours to the Supreme  
26 Court when responding to its Order for time specifics on its deliberations.  
27  
28

1           3.13     At various times during the check-ins, the Chair explained that they were dealing  
2 with “technical issues.”

3           3.14     During the second check-in with the public, the Commissioners returned to the  
4 public platform where the Chair “recognized” that there was “confusion . . . about what is  
5 actually going on.” She stated that the Commissioners were “now in the time where [the  
6 Commissioners were] looking at maps.” The Commissioners did not give the public access to  
7 the Commissioners deliberations over any maps. The maps were not screen shared or otherwise  
8 displayed nor disclosed publicly. The Commissioners were admittedly discussing the maps and  
9 districting decisions outside the presence of the public.  
10

11           3.15     During this second check in with the public, Commissioner Walkinshaw  
12 disclosed that the Commissioners were engaging in private discussions about how the  
13 Commissioners would draw the maps. He stated: “we have been in discussions and working on  
14 issues around keeping communities of interest together, thinking about cities’ splits, really  
15 looking carefully at maps, thinking about the requests that have come in from public input to  
16 make sure that those key priorities are integrated and adapted.”  
17

18           3.16     Also, during this check-in on the same public platform, Commissioner Fain stated  
19 that the goal of the non-public negotiations was to “put something out here for folks to take a  
20 look at.”  
21

22           3.17     The Commissioners again left the public platform.  
23

24           3.18     After a long absence, the Commissioners then reappeared into the public platform  
25 for a third “break” to check-in with the public audience. The Chair stated that the Commissioners  
26 had been reviewing final congressional and legislative maps. With this concession, it was  
27

1 apparent to the public observers that the disputed and unresolved issues that the Commission  
2 was to be deliberating in public to reach a final outcome were being negotiated in private among  
3 the Commissioners. The Commissioners were performing their redistricting work secretly. The  
4 Chair stated that the maps staff were creating for Commissioner approval would be made  
5 available later that night. The Commissioners then left the public platform.  
6

7 3.19 Much later, the Commissioners reappeared again into the public platform for a  
8 fourth “break” to check-in with its audience.  
9

10 3.20 The Chair, presumably realizing that she had disclosed that the Commission was  
11 constructing its maps and designating agreed upon boundaries in private, “clarified” her earlier  
12 statement by attempting to retract the plain meaning of what she had said. She commented that  
13 when she announced the Commission would have its maps posted on the website “sometime  
14 tonight” she was “not saying anything other than that.” She did not deny that the Commissioners  
15 were building consensus together outside the public. From the Commissioners updates, it was  
16 apparent that the deliberations over the maps illustrated continuing conflicts over boundaries that  
17 the Commissioners discussed without the public present. It was also apparent from these  
18 updates, that the Commissioners never reached any consensus on boundaries to include up to the  
19 time they voted to adopt a congressional and legislative districting plan. The Commissioners  
20 conceded there was no final map designating agreed upon boundaries when they voted in public.  
21

22 3.21 During check-in, Commissioner Sims stated that they were reviewing maps and  
23 double-checking lines. Again, admitting that the negotiations and decision making was  
24 happening privately where the public could not observe its commissioners in action.  
25  
26  
27

1           3.22   Commissioner Fain openly confessed that they were deliberating about where to  
2 put Mercer Island. The Commissioners’ thought processes and weighing of the decisive factors  
3 was of public importance. The Commissioners deliberations on where the boundaries were  
4 properly designated was not a “technical” issue nor a de minimus slight of the public’s interest  
5 in observing its governance in action.  
6

7           3.23   When the Commissioners returned to the public platform the fifth time, the Chair  
8 announced 17:09 minutes into the public meeting that they were going to begin the “discussion”  
9 portion of the meeting. The discussion ended at 28:09 minutes into the public meeting. In those  
10 eleven minutes, the Commission explained through various comments that they had yet to reach  
11 any consensus. They did not attempt to reach any consensus publicly. At that time, they did not  
12 have before them any motion to deliberate.  
13

14           3.24   Specifically in that discussion, Commissioner Fain had a “couple questions” for  
15 Commissioner Walkinshaw. He asked about the boundary between the Ninth and Tenth districts.  
16 In response, Commissioner Walkinshaw conceded that they had already been discussing that  
17 boundary outside the public platform in secret and would continue to do so. He stated: “I think  
18 we’re, you and I, are continuing, I think in public, reaching to work on what that southern  
19 boundary is. Um, I think continue to work on it.” But the Commissioners did not publicly ever  
20 work on the “southern boundary” in any public discussion.  
21  
22

23           3.25   The Commissioners returned to caucus with no actual public deliberations to take  
24 a public position or action on redistricting.  
25

26           3.26   Finally, upon ending the discussion at 28:32 into the meeting per the time stamp  
27 of the TVW recording from the Commission’s website link, the Chair asked to “caucus” for  
28



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

20 3.27 The Supreme Court ordered the Commission disclose a detailed timeline.

21 **Appendix F** (Supreme Court Order). In the Chair’s Declaration to the Supreme Court, she states  
22 under oath that the Commissioners signed the Resolution prior to the Commission moving and  
23 having before it the Resolution. If Paul Graves signed the Resolution at 11:51 p.m. and Joe Fain  
24 at 11:59 p.m. on the 15<sup>th</sup>, they signed before the Resolution came before the body on the 16<sup>th</sup>.  
25 She stated that the Resolution had previously been before the Commission on October 18, but  
26  
27

1 the “Resolution” published at that time was incomplete and a form without substantive content.

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

3 3.28 Apparently, the Commission was attempting to hurry up and vote before the  
4 deadline, but it did not make it.

5  
6 3.29 The Commission did not finally resolve district boundaries when they voted. Any  
7 maps drawn, staff apparently crafted in secret behind closed doors or in a break-out room or  
8 platform wholly inaccessible to the public. The public had no opportunity to see or hear what  
9 the Commissioners were voting to approve. It was apparent that the Commissioners similarly  
10 had no common understanding of what it was they were voting to approve. The Commissioners  
11 did not reach a consensus in public on redistricting. On November 24, 2021, the Commission  
12 published a link to its Redistricting Report and Plan. **Appendix I** (Report and Plan).

13  
14 3.30 Commissioner Augustine offered the following explanation of what had occurred  
15 after the deadline for the Commission to act: “At 12:13 a.m. on Tuesday, November 16, 2021,  
16 the Commission’s Executive Director, Lisa McLean, transmitted by email the transmittal letter  
17 and resolution to the Secretary of the Senate and the Chief Clerk of the House. . . Ms. McLean’s  
18 email did not attach final maps, or the written legal description of each district, because the maps  
19 had not yet been finalized at that time. . . It is my understanding that, after the public meeting  
20 ended, caucus staff finalized the congressional district map in accordance with the  
21 Commissioners’ agreement.”

22  
23  
24 3.31 These admissions make it clear that the Commissioners held a pro forma, last-  
25 minute vote to fabricate the perception of a public consensus when the Commission was still  
26 undecided as to the final boundaries, or it had reached such a consensus privately, equally  
27

1 violative of the public’s interest. When the Commission voted, it had yet to publish even among  
2 themselves what they were voting to approve. Final maps did not yet exist when the vote was  
3 taken.

4  
5 3.32 Throughout the evening, the Commissioners repeatedly adjourned to “caucus,”  
6 to promise that maps would be coming for the public to view and effectively admitting that they  
7 were negotiating in private. At one point, Commissioner Graves said that the Commissioners  
8 were frustrated with having to conduct this process subject to Washington's Open Public Meeting  
9 Act. He stated: “I know this is a frustrating process, and doing [redistricting] in this way, in  
10 public meetings is a ...[inaudible] and taking the discussions we have had over the last several  
11 months and doing the actual clinical process of turning them into maps is a challenging process,  
12 and it’s 11 o’clock at night. And we are working very very hard, we probably look tired and are  
13 tired.”

14  
15  
16 3.33 Two days later, Commissioner Graves issued a press release, **Appendix J**  
17 (Graves Press Statement), wherein he admitted that the Commissioners did not operate in  
18 accordance with open government principles. The press release stated: “The final hours late on  
19 Monday, hampered by extensive technical challenges, resulted in a five-hour public meeting  
20 marked by regular breaks and confusion. ‘I believe strongly in open government,’ said Graves.  
21 ‘So I am more than disappointed that the chaos Monday evening led to a lack of transparency  
22 and open deliberation. We did not live up to the standard for open government that the  
23 commission promised, that I expect from my government, and that the people deserve.’”

#### 24 **IV. CAUSES OF ACTION**

25  
26 The above factual allegations are incorporated into the following causes of action:

27  
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 **Uniform Declaratory Judgments Act**

2 4.1 This Court has the power to declare the rights, status and other legal relations  
3 among the parties to this matter.

4  
5 4.2 Plaintiffs are interested persons under Washington’s constitution and statutes who  
6 seek to obtain a declaration of rights, status or other legal relations as to the defendants pursuant  
7 to the authority of the Uniform Declaratory Judgments Act, RCW 7.24 et seq.

8 4.3 A declaratory order in this matter would terminate the uncertainty and  
9 controversy giving rise to the proceeding. Defendants must conform with their public duties and  
10 obligations for transparency even in the face of pandemic restrictions that have forced public  
11 officials to carry out their duties on internet platforms, and like remote forums. Clarity is needed  
12 as to what conforms with the law and what does not when functioning remotely. Plaintiffs  
13 require assurances that they will not be bound by decisions made in private, without taking any  
14 position on redistricting decisions, and that future decision making will occur in conformance  
15 with the law.  
16  
17

18 4.4 Plaintiffs have standing as members of the public who maintain a special  
19 relationship with defendants, having observed defendants’ conduct and having heard the  
20 representations of defendants that violate plaintiffs’ rights to public participation in redistricting.  
21

22 4.5 The matters set forth are justiciable, the record having been perfected evidencing  
23 the violations that may be repeated and or acted upon by the Supreme Court erroneously without  
24 prompt judicial intervention as set forth on defendants’ public website.  
25  
26  
27

1 4.6 Alternatively if not found justiciable, this matter presents questions of substantial  
2 public interest as evidenced by the defendants' public statements and the ongoing media  
3 coverage of the events that warrants a final judicial outcome and hearing on the merits.

4  
5 4.7 Defendants conducted business in private. Defendants failed to fulfill their  
6 constitutional obligations to timely set redistricting boundaries publicly but feigned to have met  
7 its obligations by voting on a measure that had been formulated and agreed upon in private, or  
8 alternatively had yet to be formulated and agreed upon in private such that there was no public  
9 consensus on any measure as required.

10  
11 4.8 Defendants may repeat such violations because the Commission operates as a  
12 state agency with staff support and depends upon staff support for continuity. In the absence of  
13 corrective action and clarity on its violations, staff are likely to repeat the same errors with any  
14 newly appointed commissioners in the future without prompt and immediate corrective action.  
15 In addition, the issue of redistricting came before the Supreme Court where the Court expressly  
16 approved the Commissions' actions without deciding the transparency issues it knew existed.

17  
18 **Appendix H** (Court's Dec. 3<sup>rd</sup> Order).

19 4.9 Based upon the above stated allegations, plaintiffs seek any and all relief available  
20 to it under Washington's Uniform Declaratory Judgments Act to include an order declaring  
21 defendants conduct a violation of Washington's laws regarding transparency and enjoining any  
22 further violations of plaintiffs' rights or state law.

23  
24 **Violation of Washington's Open Public Meetings Act**

25 4.10 Defendants are subject to Washington's Open Public Meetings Act. RCW  
26 44.05.080.

1 4.11 OPMA mandates that every member of the governing body of a public agency  
2 must complete training on the requirements of OPMA. RCW 42.30.205.

3 4.12 On January 27, 2021, an Assistant Attorney General gave an OPMA presentation  
4 to the Commission that he conceded did not meet the statutory training requirements of OPMA.  
5

6 **Appendix A (Meeting Transcript)**

7 4.13 At this presentation, Commissioners expressed their commitment to transparency  
8 and acting in conformance with their public duties openly.

9 4.14 Defendant Commissioners did not thereafter convene to meet its statutory  
10 training requirements under OPMA collectively, and upon information and belief did not do so  
11 individually.  
12

13 4.15 Defendant Commission and Commissioners violated OPMA’s training  
14 requirements.  
15

16 4.12 Defendants have the express duty to “hold open public meetings pursuant to the  
17 open public meetings act, Chapter 42.30.”

18 4.13 Defendant Commission and Commissioners published on its website its Mission  
19 and Purpose:  
20

21 “In Our Process

- 22 • Be open, transparent, and credible
- 23 • Provide access to everyone and welcome all voices
- 24 • Grounded in statute

25 In Our Conduct:

- 26 • Strive for transparency...

27 4.14 Defendants violated their own mission statement because they were not  
28 transparent and they did not provide public access, and the Chair was deceptive about such lack

1 of transparency in her Declaration to the Supreme Court. She omitted pertinent facts like the  
2 majority of the deliberative process and action taken occurring offline. She was incorrect about  
3 votes having been taken prior to the deadline. The Commission voted or at least took straw votes  
4 privately.  
5

6 4.15 Washington's Open Public Meetings Act requires "All meetings of the governing  
7 body of a public agency shall be open and public and all persons shall be permitted to attend any  
8 meeting of the governing body of a public agency, except as otherwise provided in this chapter."  
9 RCW 42.30.030.  
10

11 4.16 Washington's Open Public Meetings Act states: " No governing body of a public  
12 agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a  
13 meeting open to the public and then only at a meeting, the date of which is fixed by law or rule,  
14 or at a meeting of which notice has been given according to the provisions of this chapter. Any  
15 action taken at meetings failing to comply with the provisions of this subsection shall be null and  
16 void."  
17

18 4.17 Washington's Open Public Meetings Act states: "No governing body of a public  
19 agency at any meeting required to be open to the public shall vote by secret ballot. Any vote  
20 taken in violation of this subsection shall be null and void, and shall be considered an "action"  
21 under this chapter."  
22

23 4.18 Washington's Open Public Meetings Act defines "meeting" as "meetings at which  
24 action is taken." RCW 42.30.020; *see also Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550,  
25 562, 27 P.3d 1208, 1216 (2001).  
26  
27  
28

1 4.19 Washington's Open Public Meetings Act defines "action," as "the transaction of  
2 the official business ... by a governing body including but not limited to receipt of public  
3 testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions."  
4  
5 *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 562, 27 P.3d 1208, 1216 (2001).

6 4.20 A "meeting" can be held even when all the parties are not in the same room.  
7 Simultaneous communication, electronic communication, negotiation through staff, "serial"  
8 meetings with fewer members than a quorum, may all constitute "meetings" under Washington's  
9 Open Public Meetings Act. *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 562, 27 P.3d  
10 1208, 1216 (2001).

11  
12 4.21 Defendants utilized an internet platform to conduct its activities but failed to  
13 utilize that platform in conformance with its duties under OPMA.

14 4.22 On November 15, 2021, Washington State Redistricting Commission engaged in  
15 secret negotiations to draft and come to agreement about the proposed legislative and  
16 congressional district maps. Defendants' actions privately and inaction publicly constitutes  
17 violations of Washington's Open Public Meetings Act.

18  
19 4.23 Defendants did not act in a timely manner and did not reach a consensus that the  
20 Supreme Court or any other entity may rely upon a valid expression of Commission action.

21  
22 4.24 Defendants' motions and corresponding votes should be deemed void or voided  
23 by court order to deter against similar future violations or reliance upon such action as valid  
24 when it was not. Plaintiff takes no position on the redistricting decisions made.

25  
26 4.25 The individual Commissioners knew that they were violating Washington's Open  
27 Public Meetings Act.



1 4.26 Plaintiffs seek an order as to these OPMA violations and corresponding sanctions  
2 under the statute to enforce state transparency and to deter against repeated violations in the  
3 future.

4 4.27 Plaintiffs have incurred attorney's fees and costs in redressing their rights and in  
5 pursuit of conformance with OPMA.  
6

### 7 **Washington's Constitution**

8 4.28 Plaintiff seeks declaratory and injunctive relief directly under Washington's  
9 Constitution.  
10

11 4.29 WASH. Const. art. II § 43 provides for "Redistricting" state legislative and  
12 congressional districts by Commission action.

13 4.30 The Legislature must enact laws providing for the implementation of the  
14 Commission and additional standards to govern the Commission.

15 4.31 In 1983, the Legislature passed the Washington State Redistricting Act.  
16

17 4.32 The Redistricting Act obligates a Commission to accomplish state legislative and  
18 congressional redistricting.

19 4.33 The Legislature mandated that the Commission hold open meetings pursuant to  
20 the open public meetings act, RCW 42.30.

21 4.34 By rule, Commission meetings shall be conducted in accordance with the Open  
22 Public Meetings Act. WAC 417-01-155(4).  
23

24 4.35 By rule, the Commission shall not adopt any redistricting plan except at a public  
25 meeting WAC 417-01-155(5).  
26  
27  
28

1 4.36 By statute, the Commission may not **vote** by secret ballot, RCW 42.30060. By  
2 rule, the Commission shall not take **any action** by secret ballot. WAC 417-01-155(6).

3 4.37 Washington’s Open Public Meetings Act requires all meetings of the governing  
4 body of a public agency be open and public, RCW 42.30.030.

5 4.38 Washington’s Open Public Meetings Act defines “meeting” to mean “meetings  
6 at which action is taken...”, RCW 42.30.020(4).

7 4.39 “Action” is defined as the “transaction of the official business of a public agency  
8 by a governing body including but not limited to receipt of public testimony, deliberations,  
9 discussions, considerations, reviews, evaluations, and final actions, RCW 42.30.020(3).

10 4.40 Washington’s Constitution expressly provides that the Supreme Court has  
11 original jurisdiction to hear and decide all cases involving congressional and legislative  
12 redistricting.

13 4.41 Defendants convened a regular business meeting then conducted business and  
14 acted in private, not on the public record.

15 4.42 Plaintiff Washington Coalition for Open Government seeks judicial review of the  
16 Commission’s actions taken in private and secret for purposes of permanently enjoining similar  
17 conduct in the future, and to declare such private and secret action a violation of Washington’s  
18 Constitution; an improper delegation of Washington’s Legislative powers; and outside the scope  
19 of any Legislative authority.

20 4.43 Plaintiff takes no position on whether the redistricting should be as the  
21 Commission or Commissioners deemed proper. Plaintiff has pursued this action for purposes of  
22 ensuring transparency and to enforce Washington’s laws. To the extent Plaintiff seeks to  
23

1 invalidate defendants' maps or measures, it is for purposes of ensuring public participation and  
2 transparency, not redistricting or any redistricting outcome.

3 4.44 Plaintiff has no plain or speedy alterative remedies to ensure Commission  
4 conformance now or into the future.

## 5 **V. PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for relief as follows:

- 7 1. An order finding that defendants acted outside their authority because of their  
8 inaction publicly and their actions taken privately;
- 9 2. An order declaring defendants' private actions a violation of Washington's  
10 Constitution and Open Public Meetings Act;
- 11 3. An order enjoining future violations;
- 12 4. An order finding defendants' votes void and unenforceable without comment on  
13 the merits of the proposed or Commission's desired redistricting decisions;
- 14 5. A civil penalty against each individual Commissioner in the amount of \$500.00,  
15 pursuant to RCW 42.30.120, or, if any Commissioner has previously been found  
16 to have violated Washington's Open Public Meetings Act, then a civil penalty in  
17 the amount of \$1,000.00, pursuant to RCW 42.30.120;
- 18 6. An order mandating compliance with OPMA training requirements;
- 19 7. An award of Plaintiff's costs and attorneys' fees as authorized by statute or in  
20 equity;
- 21 8. For such other and further relief as the Court deems just and equitable in the  
22 premises.

1  
2 Dated this 9th day of December, 2021.

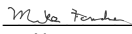
3  
4 WITHERSPOON • KELLEY

III BRANCHES, PLLC

5  
6   
CASEY M. BRUNER, WSBA # 50168  
Counsel for Plaintiffs

7  
8   
JOAN K. MELL, WSBA #21319  
Counsel for Plaintiffs

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

12   
Mike Fancher, WCOG President

13 TABLE OF APPENDICES

- 14 A. Washington State Redistricting Commission January 27, 2021 Meeting Transcript  
15 B. Resolution of Redistricting Congressional and Legislative Districts October 18, 2021  
16 C. Washington State Redistricting Commission Meeting Agenda November 15, 2021  
17 D. Washington State Redistricting Commission November 15, 2021 Meeting Minutes  
18 E. Washington State Redistricting Commission November 15/16, 2021 Meeting Transcript  
19 F. Washington State Supreme Court No. 27500B-675 Order November 18, 2021  
20 G. Sworn Declaration of Sarah Augustine November 22, 2021  
21 H. Washington State Supreme Court No. 27500B-675 Order December 3, 2021  
22 I. Washington State Redistricting Commission 2021 Report to the Legislature  
23 J. Statement from Redistricting Commissioner Paul Graves November 17, 2021

24  
25  
26  
27  
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