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7 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

8 WASHINGTONIANS FOR WILDLIFE  
9 CONSERVATION,

10 Plaintiff,

11 v.

12 JAY INSLEE, in his capacity as Governor of  
13 the State of Washington; WASHINGTON  
14 DEPARTMENT OF FISH AND WILDLIFE;  
15 BARBARA BAKER, in her capacity as a  
16 Commissioner of the Fish and Wildlife  
17 Commission; JOHN LEHMKUHL, in his  
18 capacity as a Commissioner of the Fish and  
19 Wildlife Commission; LORNA SMITH, in  
her capacity as a Commissioner of the Fish  
and Wildlife Commission; MELANIE  
ROWLAND, in her capacity as a  
Commissioner of the Fish and Wildlife  
Commission; and TIM RAGEN, in his  
capacity as a Commissioner of the Fish and  
Wildlife Commission.

20 Defendants.

Case No.

**INFORMATION AND PETITION FOR  
QUO WARRANTO JUDGMENT,  
WRIT OF MANDAMUS, AND  
DECLARATORY AND INJUNCTIVE  
RELIEF**

21 Plaintiff, Washingtonians for Wildlife Conservation, submits the following information  
22 and petition for quo warranto judgment, writ of mandamus, and declaratory and injunctive relief:

23 **I. PARTIES**

24 1. Plaintiff Washingtonians for Wildlife Conservation is a Washington non-profit  
25 corporation, dedicated to promoting scientific wildlife management and protecting the rights of  
26 conservationists and sportspeople in Washington. Washingtonians for Wildlife Conservation, and  
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1 its member organizations represent approximately 54,280, residents of the state of Washington.

2       2. Defendant Jay Inslee is the Governor of the State of Washington with his primary  
3 office located at 416 Sid Synder Avenue SW, Olympia WA 98504. Governor Inslee has  
4 responsibility to appoint the members of the Fish and Wildlife Commission pursuant to RCW  
5 77.04.030.

6       3. Defendant the Washington Department of Fish and Wildlife (the Department) is an  
7 agency of the State of Washington, which by statute is governed by the Fish and Wildlife  
8 Commission (the Commission), and the Director of the Department (the Director) pursuant to  
9 RCW 77.04.020. The Department and the Commission have their primary office at 1111  
10 Washington St. SE, Olympia, WA 98501

11       4. Defendant Barbara Baker was first appointed to the Commission in January 2017,  
12 and was reappointed to the Commission in March 2023.

13       5. Defendant John Lehmkuhl was appointed to the Commission in January 2022.

14       6. Defendant Lorna Smith was appointed to the Commission in January 2021.

15       7. Defendant Melanie Rowland was appointed to the Commission in January 2022.

16       8. Defendant Tim Ragen was appointed to the Commission in January 2022.<sup>1</sup>

17       9. The Challenged Commissioners were confirmed by the Senate in April 2023.

## 18                               **II. JURISDICTION AND VENUE**

19       10. This Court has jurisdiction over the subject matter and the parties pursuant to article  
20 IV, section 6 of the Washington Constitution and RCW 2.08.010.

21       11. Venue is proper under RCW 4.12.020 and .025.

## 22                               **III. FACTUAL BACKGROUND**

23       12. The Legislature established the Department in RCW 77.04 (*et seq.*). The  
24 Department consists of the Commission and the Director.

25       13. The Legislature mandated that the Department and the Commission manage and  
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27 <sup>1</sup> Collectively these Commissioners are referred to as the Challenged Commissioners.

1 conserve the wildlife, fish, and shellfish that are the property of the state to avoid the impairment  
2 of the resources. The Commission is further mandated to attempt to maximize the public  
3 recreational game fishing and hunting opportunities of all citizens. RCW 77.04.012.

4 14. The Commission consists of nine registered voters appointed by the Governor, with  
5 the advice and consent of the Senate. Three Commissioners must reside east of the Cascade  
6 Mountains and three must reside West of the Cascade mountains with the remaining  
7 Commissioners being “at-large” Commissioners who may reside anywhere in Washington. RCW  
8 77.04.030. There is no term limit for Commissioners.

9 15. In defining the qualifications of members of the Commission, the Legislature  
10 further mandated that in making appointments “the governor shall seek to maintain a balance  
11 reflecting all aspects of fish and wildlife, *including representation recommended by organized*  
12 *groups representing sportfishers, commercial fishers, hunters, private landowners, and*  
13 *environmentalists.”* RCW 77.04.040 (emphasis added).

14 16. Washingtonians for Wildlife Conservation is a nonprofit organization representing  
15 approximately 54,280 conservationists and sportspersons.

16 16. It is the duty of the Commission “to maximize fishing, hunting, and outdoor  
17 recreational opportunities compatible with healthy and diverse fish and wildlife populations.”  
18 RCW 77.04.055.

19 17. The Governor and his predecessors, have frequently appointed Commissioners  
20 without seeking or obtaining confirmation by the Senate.

21 18. One such former Commissioner served for a period of 18 years without ever having  
22 been confirmed by the Senate.

23 19. The failure to formally undergo the confirmation process for appointees to the  
24 Commission deprived the public, interested parties, and hunters of information necessary to  
25 evaluate the suitability of such appointees to fulfil their statutory obligations to promote  
26 sustainable hunting in the State of Washington.

27 20. All nine Commissioners were recently put up for confirmation by the Senate and

1 were confirmed.

2 21. The Commission's actions in recently voting to end a spring bear hunt, against the  
3 scientific evidence produced by the Department and against the Department and the Director's  
4 recommendation establish that the Commission as constituted lacks the balance required by the  
5 enabling statute.

6 22. Statements made by several of the Commissioners cast substantial and serious  
7 doubt on whether they satisfy the qualifications for Commissioners established by the Legislature.  
8 They also cast doubt on whether the Commission's vote to end the spring bear hunt was done in  
9 response to the Commissioner's subjective "values" rather than the values and mandates of the  
10 Legislature expressed in the enabling statute.

11 23. Commissioner Baker, is an attorney and retired administrator, with work  
12 experience as the Chief Clerk of the House of Representatives, and as the Policy Director for the  
13 House Democrats.

14 24. Commissioner Lehmkuhl is a wildlife research biologist previously employed by  
15 the U.S. Forest Service.

16 25. Commissioner Ragen is a former director of the U.S. Marine Mammal  
17 Commission.

18 26. Commissioner Rowland is a retired environmental attorney.

19 27. Commissioner Smith is a retired director of Western Wildlife Outreach, an  
20 environmentalist group with a focus on the preservation of large predators.

21 28. The Commission contains a single member employed or with a work history in  
22 agriculture or ranching.

23 29. The Commission contains two other retired research biologists and one  
24 administrator of a fisheries Commission.

25 30. The Commission contains no representatives of organized sportspersons.

26 31. The Commission contains no current or former commercial fishers.

27 32. The Commission contains no representatives of organized recreational fishers.

1           33.     The Governor has never solicited the input of organized sportspersons or  
2 recreational fishers in making appointments to the Commission.

3           34.     The Governor reappointed Commissioner Baker, but declined to reappoint  
4 Commissioner Thorburn, despite the fact that Commissioner Thorburn was viewed as an advocate  
5 for sportspeople on the Commission.

6           35.     Accordingly, two of the four members of the Commission who voted for preserving  
7 the spring bear hunt in accordance with the Department's recommendation have now been  
8 replaced.

9           36.     The Commission as currently constituted does not reflect an attempt at maintaining  
10 a balance of all aspects of fish and wildlife. The Commission is heavily weighted towards members  
11 involved in environmental activism, predator conservation, and former researchers employed by  
12 governmental agencies.

13           37.     This skew against sportspersons, commercial and recreational fishers, and  
14 consumptive use of natural resources more generally has resulted in the appointment of  
15 Commissioners that individually and collectively fail to satisfy the statutory qualifications for  
16 Commissioners.

17           38.     The failure to consult with organized representatives of consumptive users also  
18 violates clear statutory commands related to the valid appointment of Commissioners.

19           39.     The challenged Commissioners' inability to satisfy the statutory requirements for  
20 appointment and their duties as Commissioners was further evidenced by statements at their  
21 confirmation hearings and at other events.

22           40.     Commissioner Smith was asked at her confirmation hearing about the need to  
23 protect hunters and their interests, and respond to the decline of hunting in the State of Washington,  
24 but Commissioner Smith redirected the question to discuss "all kinds of wildlife recreation"  
25 including birding and hiking, but did not address concerns about promoting hunting and fishing,  
26 which unlike hiking and birding is clearly commanded by the enabling statute.

27           41.     Commissioner Baker also highlighted non-consumptive uses like biking and bird

1 watching, noting that there was a substantial increase in non-consumptive use over the course of  
2 the pandemic, and that the increased use posed challenges for the Department in fulfilling its  
3 mandate to preserve wildlife. But rather than consider restricting such uses, Commissioner Baker  
4 observed that “at the same time, by the way, and this is where it gets tricky” that the Department  
5 was obligated “to provide opportunity, to [laughs] the older statutes say hunters and anglers,  
6 including recs and commercials,” referring to recreational and commercial consumptive use.

7 42. At her confirmation hearing Commissioner Baker noted that the department needed  
8 to prioritize managing non-consumptive users of the State’s resources and asked “how do we  
9 manage the conflicts between them and the wildlife and the habitat and the traditional people who  
10 are out there [pause] *shooting things* or fishing.” (emphasis added).

11 43. No sportsperson would describe harvesting game as “shooting things.”

12 44. Similar to Commissioner Smith, when asked about the Department’s plans to  
13 improve hunting and fishing opportunities in Washington, Commissioner Baker responded:  
14 “[r]ight now, we have so little truly wild areas left that we don’t need to be recruiting or retaining  
15 anybody to go out there.”

16 45. Finally, Commissioner Lehmkuhl discussed the termination of the spring bear hunt  
17 in his confirmation hearing describing it as one of several “sticker issues that have to do with  
18 values,” noting that the individuals that voted to end Washington’s spring bear hunt did so because  
19 “we don’t think that sport hunting is a proper thing to do for bears in the springtime,” which is a  
20 “value issue” about “what’s legitimate.”

21 46. None of the challenged Commissioners stressed or acknowledged their clear  
22 statutory obligation to promote hunting and fishing in Washington except for when authorizing  
23 such harvesting would impair the supply of the natural resources.

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

##### 25 **A. First Cause of Action—Writ of Quo Warranto**

26 47. Plaintiffs bring a quo warranto action to challenge the entitlement of the Challenged  
27 Commissioners to sit on the Commission.

1           48. Plaintiff has a special interest in the Commission positions at issue here as an  
2 organized group representing hunters and conservationists. As provided by RCW 77.04.040, the  
3 Governor is obligated to maintain a balance of Commissioners representing different interests by  
4 ensuring that the Commission includes representation recommended by organized groups like  
5 Plaintiff.

6           49. This obligation is a not just a general duty, but rather an essential qualification for  
7 Commissioners established by the Legislature.

8           50. The Governor failed to solicit the input of any organization representing hunters  
9 and conservationists.

10          51. The Governor further knowingly replaced a Commissioner known to represent the  
11 interests of hunters and conservationists, with additional Commissioners with substantially similar  
12 histories and backgrounds to those of already appointed Commissioners.

13          52. Contrary to the statute's command for the Commission to facilitate and expand  
14 hunting and fishing to maximum extent possible, consistent with the Department's duty to  
15 conserve wildlife and the natural resources of the State for future generations, the Governor  
16 appointed a controlling majority of Commissioners who have stated that their priority is non-  
17 consumptive use and who have acknowledged hostility to expanding consumptive, and who have  
18 cited "values" not found in the statute as justifying disregarding clear statutory commands, and the  
19 Department's own recommendations to restrict hunting in Washington.

20          53. The Challenged Commissioners' statements relating to the prioritization of non-  
21 consumptive uses, not only conflicts with the statutory text, but with the Legislature's statement  
22 of intent, which states: "[r]ecognizing the state's changing environment, the legislature intends to  
23 continue to provide opportunities for the people to appreciate wildlife in its native habitat.  
24 However, the wildlife management in the state of Washington *shall not cause a reduction of*  
25 *recreational opportunity for hunting and fishing activities.*" (emphasis added).

26          54. Accordingly, the Challenged Commissioners are not qualified to sit on the  
27 Commission and are incapable of carrying out their statutory duties.

1           55.     The Court should issue a judgment under RCW 7.56.100 determining that the  
2 Challenged Commissioners unlawfully hold their positions as Commissioners of the Washington  
3 Department of Fish and Wildlife, and should be restrained from acting in that capacity, and  
4 excluded from office in forfeit.

5 **B.     Second Cause of Action—Writ of Mandamus**

6           56.     RCW 77.04.040 sets forth certain requirements for the appointment of  
7 Commissioners, including consultation with organized groups representing statutorily important  
8 interests including hunters, and commercial and recreational fishers.

9           57.     The Governor has failed to consult with representatives for hunters and fishers.

10          58.     The Governor has failed to even set out a process by which organized  
11 representatives for hunters and fishers can consult with him concerning appointments to the  
12 Commission.

13          59.     The Governor acted outside of his authority when he failed to consult with  
14 organized representatives of Washington sportspersons in making his appointments to the  
15 Commission.

16          60.     RCW 77.04.040 also establishes a need to seek balance between competing  
17 interests in the State’s natural resources, including the interests of hunters and fishers.

18          61.     The enabling statute also mandates that the Commission “maximize fishing,  
19 hunting, and outdoor recreational opportunities.” RCW 77.04.012, 055. Implicit in these statutory  
20 commands concerning the powers, duties, and authority of the Commission and the Department,  
21 is the requirement that the Governor appoint persons willing and able to fulfil those duties and not  
22 persons who would frustrate them.

23          62.     The Legislature’s stated intent also contains this prioritization of hunting and  
24 fishing.

25          63.     The Governor acted outside of his authority when he appointed Commissioners  
26 whose public statements evidence that they are unwilling or unable to act consistent with the  
27 statutory mandate to promote hunting and fishing in Washington. The Governor further acted



1 outside his authority when he appointed a Commission, which lacked the statutorily required  
2 balance of competing interests.

3 64. There is no plain, speedy, and adequate remedy in the ordinary course of law to  
4 compel Governor Inslee to comply with his statutory duties other than a writ of mandamus.

5 65. The Plaintiff seeks a writ of mandamus compelling the Governor to comply with  
6 his statutory duties and consult with organized representatives of hunters and fishers in selecting  
7 replacement Commissioners. Such consultation and appointment should occur within sixty days  
8 as required by RCW 77.04.030.

9 **C. Third Cause of Action—Declaratory Judgment**

10 66. There is an actual, present, and justiciable controversy between Plaintiff and  
11 Defendants, concerning the validity of the appointments of the Challenged Commissioners and the  
12 Governor's compliance with RCW 77.04 (*et seq.*).

13 67. A judicial determination under RCW 7.24.020 concerning these issues will  
14 conclusively terminate the dispute.

15 68. Plaintiff is entitled to a declaration that the Governor failed to comply with his  
16 statutory duties under RCW 77.04.040.

17 69. Plaintiff is further entitled to a Declaration setting forth the legal right of Plaintiff  
18 and other similarly situated groups to recommend representatives for their interests to sit on the  
19 Commission.

20 **V. PRAYER FOR RELIEF**

21 For the forgoing reasons Plaintiff requests the following relief:

22 1. A writ of quo warranto be issued against the Challenged Commissioners declaring  
23 unlawful their appointment as members of the Commission.

24 2. A writ of mandamus ordering the Governor to comply with RCW 77.04 (*et seq.*) in  
25 selecting replacement Commissioners, including the requirement of RCW 77.04.040 that the  
26 Governor seek to represent a balance of interests, including representation recommended by  
27 representatives of the State's hunters and fishers.

1           3.       A declaratory order declaring the rights among the parties as set forth herein, and  
2 such other relief afforded by RCW 7.24 (*et seq.*).

3           4.       An injunctive order enjoining further violations of the Plaintiff's rights, requiring  
4 the Governor to solicit and consider the input of organized representatives under RCW 77.04.040,  
5 and prohibiting the Challenged Commissioners from serving pending the appointment of proper  
6 replacements.

7           5.       An award of costs and expenses, including reasonable attorneys' fees, as allowed  
8 in RCW 7.24.100, RCW 7.56.100, or other provision of law; and

9           6.       Such other relief as the Court deems just and appropriate.

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11           DATED: June 13, 2023

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13                                   LANE POWELL PC

14  
15                                   By: \_\_\_\_\_

16                                   Callie A. Castillo, WSBA No. 38214

17                                   Daniel Miller, WSBA No. 56810

18                                   1420 Fifth Avenue, Suite 4200

19                                   P.O. Box 91302

20                                   Seattle, Washington 98111-9402

21                                   Telephone: 206.223.7000

22                                   castilloc@lanepowell.com

23                                   millerd@lanepowell.com

24                                   Attorneys for Washingtonians for Wildlife

25                                   Conservation  
26  
27