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May 16, 2025

The Honorable Robert W. Ferguson, Governor of Washington  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

**PETITION TO REMOVE COMMISSIONERS BARBARA BAKER, JOHN  
LEHMKUHL, LORNA SMITH, AND MELANIE ROWLAND FROM THE FISH  
AND WILDLIFE COMMISSION UNDER RCW 43.06.070**

**INTRODUCTION**

The U.S. Sportsmen's Alliance Foundation (Petitioner), on behalf of itself and its members, who include many hunters, anglers, and trappers in the State of Washington, hereby petitions the Honorable Governor Bob Ferguson, to exercise his constitutional and statutory authority to remove Commissioners Barbara Baker, John Lehmkuhl, Lorna Smith, and Melanie Rowland for cause from the Washington Fish and Wildlife Commission. As outlined below, these Commissioners have demonstrated incompetence, misconduct, and malfeasance in office.

In September of 2023, Petitioner issued a Public Records Act (PRA) request to the Washington Department of Fish and Wildlife (WDFW) concerning a number of issues of concern to our members in the state. The WDFW's Public Records Analyst identified a total of about 471,000 relevant records as a result of our request. To date, Petitioner has received appx. 17,000 records, or less than 4% of those identified by the WDFW as relevant. It's important to note that the vast majority of the delivered records were only received *after* Petitioner initiated litigation in January, 2025 against the WDFW for its failure to timely

produce the requested records. In fact, *more than 90%* of the total records received were delivered in May 2025, but still only accounted for a mere fraction of what Petitioner was told was responsive to our request.

These 17,000 records tell an extremely disturbing story about a group of Washington Fish and Wildlife Commissioners violating numerous norms, expectations, and requirements of the law. In these documents, Petitioner found one egregious example after another of violations of open meetings requirements, an open flouting of Commissioner mandates established in state law, a patent disregard of the interest of Indian tribes, a general disdain, if not outright contempt, for public involvement in government processes, and an overlord mentality toward WDFW staff. It is unfortunate, but true, that what Petitioner offers in this petition is well beyond sufficient to support removal of Commissioners Baker, Lehmkuhl, Rowland, and Smith, but we must make this plain at the outset: we have hundreds, if not thousands, of pages of additional examples to support their removal, and we are ready, willing, and able to share these with the Governor, if needed, to ensure a swift and just response to this petition.

Going through each of the Commissioners in turn is critical to understanding how far off the rails the operation of their decision-making has become. Commissioner Baker, Chair of the Commission, has participated with other Commissioners in regular, routine, and repeated violations of the Washington's Open Public Meeting Act (OPMA). As Chair, she's failed to hold Commissioners accountable for similar violations, and she has also failed to hold Commissioners accountable for ongoing and repeated violations of Washington's Public Records Act (PRA). Baker has also fostered a routine disregard of RCW 77.04.012, which directs Commissioners to maximize recreational hunting and

fishing opportunities for Washington residents. Quite to the contrary, she's pushed in the other direction. She's unfit to serve or lead the Commission.

Commissioner Lehmkuhl has violated the PRA, through his unwillingness or inability to comply, including deleting or losing responsive records from a personal email account. He also colluded with other Commissioners to meet and draft, review, and push forward substantive WDFW policy behind closed doors, in violation of OPMA. Lehmkuhl has also fostered a routine disregard of RCW 77.04.012, which directs Commissioners to maximize recreational hunting and fishing opportunities for Washington residents. Lehmkuhl has voiced his opposition to this mandate. DOCUMENT 1.

Commissioner Smith has failed to show basic respect and kindness towards WDFW staff. There need be no other reason for her removal, but she has also ignored PRA requests, shuttered civic participation of tribes, and concealed Commission on-goings from the public, including counting votes and introducing motions and other substantive policies outside established Commission procedures. Like Baker and Lehmkuhl, Smith predictably disregarded RCW 77.04.012, which directs Commissioners to maximize recreational hunting and fishing opportunities for Washington residents. In document after document, the records we have in hand show her disdain for hunters, her willingness to ignore science, and a particular zeal for canceling hunting opportunities. DOCUMENT 2, DOCUMENT 3.

Commissioner Rowland has also mistreated WDFW staff, particularly when it comes to public records requests. In addition to her bullying, she has shown complete disregard for the public's requests for her statutorily public communications records. Further, Rowland has knowingly violated OMPA in pursuit of implementing her ideologies

through her role as Commissioner. Rowland has also directly admitted in communications with other Commissioners that science should be discarded in favor of “ethical” concerns (see DOCUMENT 4), and for her, this means opposing hunting as an “unethical” activity, a position that stands in stark opposition to RCW 77.04.012.

Individually and collectively, the actions of these Commissioners have shattered confidence in the Commission. It is the antithesis of the Governor’s priority to “make state government more efficient and effective and center the people in every decision.”<sup>1</sup> The people of Washington deserve better. Governor Ferguson, Petitioner asks that you restore the trust and confidence of the good people of Washington in their government and public officials by taking swift action to remove Commissioners Baker, Lehmkuhl, Smith, and Rowland in accordance with RCW 43.06.070.

## **LEGAL AUTHORITY**

### **I. Right to petition.**

The First Amendment, which is incorporated to the states through the Fourteenth Amendment, guarantees “the right of the people ... to petition the Government for a redress of grievances.” U.S. Const. amend. I. “The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression.” *McDonald v. Smith*, 472 U.S. 479, 482 (1985). “The right to petition extends to all departments of the government.” *In re Marriage of Meredith*, 148 Wash. App. 887, 899, 201 P.3d 1056, 1062 (2009) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)). It includes the right to “complain to public officials and to seek administrative and judicial relief.” *Id.* (citations omitted).

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<sup>1</sup> <https://governor.wa.gov/priorities> (last visited April 23, 2025).

Washington's Constitution, likewise, provides "The right of petition and of the people peaceably to assemble for the common good shall never be abridged." Wash. Const. art. I, § 4. "The right to petition, like the other rights contained in the First Amendment and the Declaration of Rights to the Washington Constitution, is accorded a 'paramount and preferred place in our democratic system.'" *Richmond v. Thompson*, 130 Wash. 2d 368, 381, 922 P.2d 1343, 1350 (1996) (citation omitted). Washington Courts have interpreted Article I, § 4 "in harmony with the First Amendment." *Richmond v. Thompson*, 79 Wash. App. 327, 336, 901 P.2d 371, 376 (1995). Accordingly, it also provides Petitioner the right to seek this statutory relief for the common good.

## **II. The power to remove.**

The Washington Constitution also declares "All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law." Wash. Const. art. V, § 3. "The Constitution left" the procedures to remove officials "entirely to the legislature." *State v. Cheetham*, 19 Wash. 330, 332, 53 P. 349, 349 (1898). To that end, "[t]he governor may remove from office any state officer appointed by him or her not liable to impeachment, for incompetency, misconduct, or malfeasance in office." RCW 43.06.070; *Spokane Cnty. v. Meneses*, 546 P.3d 1012, 1017 (Wash. 2024). Section 43.06.070 gives the governor "responsibility with respect to subsequent actions by the appointee," i.e., actions after the appointment has been made. Wash. Att'y Gen. Letter Op. 1981 NO. 9, 1981 WL 139684, at \*1 n.1 (1981)

Fish and Wildlife Commissioners have long been "subject to removal only for cause," and therefore do not need to be impeached. *State ex rel. McLeod v. Reeves*, 22 Wash. 2d 672, 674, 157 P.2d 718, 720 (1945). Because there is no longer a provision in the code

concerning the removal of Commissioners, as there was when *McLeod* was decided, RCW 43.06.70 controls. *E.g., Spokane Cnty.*, 546 P.3d at 1017; Wash. Att’y Gen. Op. 1957-59 NO. 9, 1957 WL 53900, at \*3 (1957) (same) (concluding that the governor could remove members of the state parks commission under the general removal authority in RCW 43.06.70). Indeed, the Washington Supreme Court “has repeatedly held that RCW 43.06.070 is controlling whether the term of office is for a fixed or indefinite period.” *Id.* (collecting authorities).

The law further provides that “[w]hensoever the governor is satisfied that any officer not liable to impeachment has been guilty of misconduct, or malfeasance in office, or is incompetent, he or she shall file with the secretary of state a statement showing his or her reasons, with his or her order of removal.” RCW 43.06.080. The Secretary must then send the order to the removed official’s last known address. *Id.* The governor shall simultaneously appoint a “proper person to fill the office” who will “perform the duties of the office and receive the compensation thereof until his or her successor is appointed.” RCW 43.06.090. A proper person would be an individual who meets the requirements in RCW 77.04.030, 77.04.040. The removed individual “cannot appeal the governor’s decision.” Wash. Att’y Gen. Op. 2016 NO. 5, 2016 WL 2945958 at \*3 (2016) (citing *State ex rel. Howlett v. Cheetham*, 19 Wash. 330, 332-33, 53 P. 349 (1898)). And they are “not entitled to a statement of the facts justifying the governor’s determination.” *Id.* (citing *State ex rel. Davis v. Johns*, 139 Wash. 525, 536, 248 P. 423 (1926)).

### **III. Fish and Wildlife Commission’s purpose and background.**

“In the late nineteenth century, the first fish and game commissions were created to respond to decreases in wildlife populations.” Quinn Yeargain, *State Constitutions in the*

*Woods*, 41 Pace Envtl. L. Rev. 317, 336 (2024). The early fish and game commissions were “decidedly environmentalist.” Quinn Yeargain, *Administrative Capacity in Direct Democracy*, 57 U.C. Davis L. Rev. 1347, 1391 (2023). But “widespread non-enforcement of these laws by the existing game commissions led to calls to radically restructure fish and game regulations and to place them under the oversight of an independent commission.” *Id.* (citations omitted). Indeed, in the early days, the Commissioners were wildly viewed “as being cronies or friends of the governor and, as such, subservient to their whims.” Yeargain, 41 Pace Envtl. L. Rev. at 336; *see also id.* n.131 (The Arkansas Game and Fish Commission was described as a “vassal of the patronage system.”) (cleaned up).

Accordingly, a movement began “to take fish and game commissions ‘out of politics’” in the 1930s. *Id.*<sup>2</sup> *See also* RR at \*27. That led to former U.S. Senator Harry Hawes drafting model legislation on behalf of the International Association of Game, Fish, and Conservation Commissioners. *Id.* Hawes’s model legislation introduced the concept of appointing Commissioners to staggering terms. *Id.* Many states responded to this and established commissions that were more insulated from political pressures. Washington ultimately landed on this model in 1933, but not without some controversy. *McLeod*, 22 Wash. 2d at 675, 157 P.2d at 720 (citing initiative No. 62, Laws of 1933, chapter 3, p. 24) (holding that legislation declaring that game commissioners served at the pleasure of the governor instead of being appointed to terms and subject to removal for cause was enacted under an invalid declaration of emergency). Today, all but three states (Minnesota, Connecticut, and Rhode Island) have commissions. This model worked. Commissions are

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<sup>2</sup> This coincided with a larger conservation movement taking place at the federal level. *See* Theodore W. Cart “New Deal” for Wildlife: A Perspective on Federal Conservation Policy, 1933-40. *The Pacific Northwest Quarterly*, vol. 63, no. 3, 1972, pp. 113–20. *JSTOR*, <http://www.jstor.org/stable/40489013>. Accessed 25 Apr. 2025.

generally seen as successful in accomplishing their goal of conserving wildlife. Eric Biber & Josh Eagle, *When Does Legal Flexibility Work in Environmental Law?*, 42 Ecology L.Q. 787, 817–22 (2015).

Nineteen thirty-three is the same year that Aldo Leopold, who “is widely considered to be the founder of wildlife management,” published *Game Management*, “the first textbook in the field of wildlife management.”<sup>3</sup> *Game Management* has been described a “landmark work [that] created a new science that intertwined forestry, agriculture, biology, zoology, ecology, education and communication.”<sup>4</sup> After its publication, the University of Wisconsin created the Department of Game Management and appointed Leopold as its first chair. This revolutionized wildlife management into the science-based field that we know today. Indeed, in 2013 the Washington Legislature found “that it is critically important that scientific information used to inform public policy be of the highest quality and integrity.” WRC 34.05.271, LAWS OF 2013, ch. 68, § 1 (statement of legislative intent).

#### **IV. The Ruckelshaus Report.**

Things are different for the Washington Fish and Wildlife Commission. In December 2024, the William D. Ruckelshaus Center issued a report<sup>5</sup> commissioned by the Washington legislature. The report, based on interviews conducted by the Center, was highly critical of the Washington Fish and Wildlife Commission. Many individuals interviewed wanted to see the commission:

- Be more adaptive and flexible when it came to decision making
- Be less caught up in politics or conflicts among interest groups and among Commissioners

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<sup>3</sup> <https://www.fws.gov/staff-profile/aldo-leopold-1887-1948-ethical-ecologist> (last visited May 1, 2025)

<sup>4</sup> <https://wilderness.net/learn-about-wilderness/people/aldo-leopold.php> (last visited May 12, 2025).

<sup>5</sup> <https://WDFW.wa.gov/sites/default/files/2024-12/WDFW-organizational-review-final-report.pdf> (last visited May 15, 2025).



- Be more accountable for the outcomes of decisions
- Provide greater transparency around decision making, communicating the information considered, and the reasons for each decision
- Reflect and serve all people in Washington
- Coordinate and collaborate regularly with other natural resource agencies
- Have strong working relationships and collaboration with tribes
- Use the best available science to guide decision making

RR at \*23. These goals align with the same goals established in the 1930s by Hawes, Leopold, and others.

The Ruckelshaus Report recommended dismantling the Commission and establishing the WDFW as a cabinet agency. RR at \*iii. The commission model, however, is similar to a cookie jar. They both work well and have withstood the test of time. But if there are bad cookies in a cookie jar, nobody suggests throwing the jar out for its failure to function. Instead, everyone knows to throw the bad cookies out and put fresh, good cookies in the jar. In short, systems are only as good as the people in them.

The people interviewed for the Ruckelshaus Report understand that: “Many interviewees theoretically favored a Commission structure as the governance model for the Agency, with the caveat that there are significant issues with the current Commission structure that need to be addressed.” RR at \*26. The “majority” of individuals interviewed for the Ruckelshaus Report “thought it best that if there was a Commission it should be comprised of individuals with knowledge and understanding of fish and wildlife, but that they are not there to represent a specific interest.” *Id.* In short, they believed that decisions should be made “without undue preference for a particular interest group.” *Id.* at \*27.

Holding Commissioners accountable was also stressed throughout the Report. Indeed, the Report recommended “establish[ing] accountability mechanisms for Commissioners—include[ing] enforcing criteria for removal, identifying a designated

authority who has responsibility for removal, and establishing a clear pathway to remove a Commissioner.” RR at \*48. That process already exists in RCW 43.06.70, and it is what Petitioner is asking for with regards to Commissioners Baker, Lehmkuhl, Smith, and Rowland.

### ***GROUND FOR REMOVAL***

#### **I. Malfeasance—excluding the public generally and the tribes specifically**

The legislature has declared that except under emergency situations, “the governing body of a public agency shall provide an opportunity at or before every regular meeting at which final action is taken for public comment.” RCW 42.30.240. As noted above, the First Amendment protects the right to attempt to persuade public officials. Yet even with this Constitutional protection in hand, the records we’ve uncovered through our PRA request and resulting lawsuit clearly illustrate that Commissioners Baker and Smith will exclude those seeking to provide input if it doesn’t serve their ideological purposes.

As an example of this exclusion practice, Smith openly objected via email to an announcement from WDFW to all Commissioners that an official for the Swinomish Indian Tribal Community was looking forward to providing public testimony on a hunting issue at a public hearing in 2022. DOCUMENT 5. Based on the document that was provided to the Sportsmen’s Alliance, there was no opposition to Smith’s outrageous, contemptable, and unconstitutional objection by Chair Baker.

Silence can speak volumes, but we need only recall how Baker’s ‘conservation policy’ was finally derailed to understand that a tribal exclusion policy was real and apparently put into practice by Baker on various and sundry issues. Many will recall that the conservation policy was a “done deal” until several tribes publicly raised their exclusion

from the process, pointing out that no communication had taken place, and in fact, many of them had *never* been consulted on the conservation policy's contents, direction, justification, or implementation<sup>6</sup>. At that time, many pointed out that the tribal exclusion was a clear violation of not only community norms, but legal expectations between the tribes, as sovereign nations, and the Commission responsible for many of the rules and regulations on hunting, fishing, and trapping their members could be subject to. In short, it appears, based on the evidence available to us, that Smith's favored policy of excluding the tribes went well beyond one issue or one meeting, but was facilitated on many fronts by Baker. To wit, Smith intended as much, stating in her email: "If we open the door to allowing Tribes to cover treaty business at Commission meetings, it will set a *very bad precedent*."

DOCUMENT 5 (emphasis added).

Unfortunately, Smith fails to understand that the "bad precedent" being set was not about tribal participation, the "bad precedent" is/was her unacceptable and unconstitutional behavior. First, Smith, when objecting to tribal involvement, is engaging in content-based speech restriction. "A content-based [speech] regulation ... "is 'presumptively unconstitutional.'" *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006) (citation omitted). Second, the Smith policy of exclusion, carried forward by Baker on other issues, is a clear violation of the equal protection clause. Courts "apply strict scrutiny if the governmental enactment targets a suspect class or burdens the exercise of a fundamental right." *Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1141 (9th Cir. 2011) (cleaned up).

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<sup>6</sup> <https://nwssportsmanmag.com/6-tribes-request-gov-to-gov-consultations-on-WDFW-commissions-conservation-policy/> (last visited May 15, 2025).

Violating the First Amendment and the Equal protection clause is the “bad precedent” by not allowing a critically important constituency the time to voice any and all concerns at a public meeting. As the Governor is aware, these rights have been jealously guarded by our nation’s state and federal courts and were very recently discussed again in the United States Supreme Court in *Herrera v. Wyoming*, 587 U.S. 329 (2019). Denying tribes the opportunity to engage with the Commission and discuss treaty rights is beyond inappropriate – it’s patently illegal.

Baker is also fond of excluding the broader public from input during meetings. In advance of one of the meetings that was to include a “discussion” of spring bear policy, Baker sent an email to another Commissioner which was clearly meant to obfuscate her knowledge of, and agreement with, the coming vote to end spring bear hunting.

DOCUMENT 6. Baker informs the other Commissioner that she will oppose any public testimony during this critical meeting, even though this is an exceptional derivation from practice. Baker states in the email, “we will not get out [sic] work done if we open it up,” – a clear indication that her decision had been made, and she didn’t need or want to hear from the public. *Id.* Most critically, Baker already knew that the motion to end spring bear hunting would be offered and passed with her support. *Id.* She obviously didn’t want the public to derail her scheme. To exclude the public from such a major decision, when there was no advance warning to the public that a majority of the Commission had daisy-chained secret meetings, hidden from the public, to get the hunt-canceling vote lined up (discussed more below), is not only illegal, but craters public trust in government in all its forms and cannot be tolerated.

## **II. Malfeasance—violations of basic norms and the law regarding public meetings.**

Like the Public Records Act, Washington's OPMA is in place to ensure that government "actions be taken openly and that their deliberations be conducted openly." RCW 42.30.010. Washingtonians did not "yield their sovereignty to the agencies which serve them." *Id.* Rather, "[t]he people insist on remaining informed and informing the people's public servants of their views." *Id.*

Fish and Wildlife Commission meetings must comply with OPMA, RCW 42.30.020, which requires meetings "be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency," RCW 42.30.030. The named Commissioners have intentionally skirted OMPA's requirements, conducting Commission business hidden from the public's view. Through multiple email chains, Commissioners have conducted substantive Commission business, such as discussing and drafting new rules and policies, without inviting the public to observe or participate.

The documents we've obtained through our PRA request and resulting lawsuit contain countless examples of Commissioners Baker, Lehmkuhl, Rowland, and Smith *routinely* engaging in daisy-chaining meetings of a majority of Commissioners to discuss, deliberate, propose, plan, and count votes on issues across the entirety of the Commission's agenda, *completely outside the public's purview*. We use "daisy-chain" to describe a process where three or four Commissioners hold a private meeting on an issue and then send one or two of that group to go lobby other Commissioners to "create" a majority of five or more, while technically skirting the legal requirement that a quorum be present to constitute a meeting under OPMA. This is the very definition of a political cabal flouting the public's

strong interest in transparent government. When you read these thousands of pages, as we have, it is beyond obvious that this practice was a well-honed routine among Baker, Lehmkuhl, Rowland, Smith, and former Commissioner Regan. We see often, “Don’t reply here” and other devices deployed to encourage daisy-chaining as the preferred method to avoid OPMA. DOCUMENT 7, DOCUMENT 8. The result, unfortunately, is that the actual Commission meetings are clearly nothing more than a sham, with a preordained decision well in hand before the public is invited or allowed to participate in any meaningful way.

To reiterate, for purposes of this petition, we offer more than sufficient evidence supporting the removal of Commissioners Baker, Lehmkuhl, Rowland, and Smith, but to be clear, we remain ready, willing, and able to provide *much more* evidence if required to support your decision to remove these Commissioners. And because we expect more documents to result from our ongoing public records request and lawsuit, we will likely have many more thousands of pages to release to the public by the time our case is resolved. What Petitioner offers below is merely illustrative, and it must be viewed as only a small percentage of the existing evidence to support removal of these Commissioners.

On October 31, 2022, less than three weeks before the Commission voted to end the spring bear hunt, Commissioner Lehmkuhl shared a draft ““middle-of-the-road”” spring bear hunting policy with former Commissioner Timothy Ragen. DOCUMENT 9. Lehmkuhl explained that Baker previously reviewed and provided comments on the draft. *Id.* Critically, we also have an email where Baker asked Lehmkuhl to talk on the phone, with one of his motion drafts as an attachment, so this statement by Lehmkuhl is confirmed by Baker’s communication through email. DOCUMENT 10. It cannot be reasonably said that

this phone call was about anything but the motion. Then, on November 3, 2022, Commissioner Smith sent the following email to Commissioners Rowland and Lehmkuhl and former Commissioner Ragen:

Please be advised that I am prepared to offer the attached motion at our upcoming meeting in Olympia regarding spring bear. I fully suspect that in the end it will come down to a 5-4 vote. For so many reasons, we cannot afford to lose on this one. Feedback?

#### DOCUMENT 11.

This became the motion that ended the spring bear hunt. Lehmkuhl responded to this message, saying “I wonder if it would be efficient if we had a zoom call among us 4 commissioners?” DOCUMENT 4. Ultimately, Commissioners Smith, Lehmkuhl, and Rowland, along with former Commissioner Ragen, agreed to meet, via Zoom, just one week prior to the Commission meeting at which the final vote was taken. DOCUMENT 12. One day after the Zoom meeting, Rowland asked Smith if she could “get [Chair Baker] to change [the upcoming meeting agenda] to the order we discussed?” DOCUMENT 13. It cannot be reasonably claimed that Baker would simply say “ok” to the change without a discussion about why the change to the agenda was necessary. Of course, we now know that the change was necessary because this group had just hashed the scheme to cancel spring bear hunting forever.

What this string of communications clearly shows is that a majority of Commissioners (five) were involved from the outset with a daisy-chain technique to form a majority voting bloc. Lehmkuhl, in another email connected to this string, stated he supported Smith’s motion, pulling back from his original proposal and falling in line with the scheme. DOCUMENT 14. The Commissioners would not have asked that the agenda be changed, in this fashion, unless they knew they had the necessary votes to end the spring

bear hunt. As discussed above, Baker was so committed to this outcome that she forbade the public from speaking at the meeting. The public's input was irrelevant; they had already determined the outcome.

Remarkably, on the evening of the day the meeting and vote took place, Smith wrote to Rowland, Lehmkuhl, and former Commissioner Ragen: "Thanks to all three of you for a job well done. We make a good team." DOCUMENT 15. Rowland responded: "Thank goodness we have each other!" *Id.* Celebrations like this don't occur unless someone 'wins' exactly what they wanted going into the meeting. There was no mystery. There was no input from the public that mattered. The decision had been made.

This entire episode is simply "bad government" on steroids. The good people of Washington, irrespective of their ideology or views on hunting, do not support this type of cloaked government process, where a majority is allowed to engage in all manner of flouting norms and the law itself to get what they want. To this point, the spring bear hunt 'win' was no isolated event, but rather, it's representative of the manner in which the group of named Commissioners operates on all issues. In March 2023, Rowland distributed an edited draft of Baker's 'conservation policy' to Smith and former Commissioner Ragen. DOCUMENT 16. Smith and former Commissioner Ragen both edited and offered comments on the draft, and Rowland asked to schedule a Zoom meeting to discuss. *Id.* Smith said that she was scheduled to meet with Baker, and asked "if we want to clue her in on what's up?" *Id.* Rowland responded: "Yes -- clue her in." *Id.* It cannot be reasonably argued that such a discussion between Smith and Baker never took place, nor that the purpose was anything but to build a majority position outside the public's view. Likewise, it cannot reasonably be



suggested that each of these Commissioners is not 100% aware they are violating the OPMA even while implementing a daisy-chain process to skirt the law.

Certainly, the named Commissioners have knowingly conducted Commission business, including offering substantive policies, motions, and agendas for review and comment, without providing the public with the opportunity to observe or offer input. And Commissioners are aware of the types of conversations they can and cannot have without violating OPMA by their own conduct with the daisy-chain technique. On multiple occasions, WDFW staff and Commissioners have asked each other to avoid ‘replying all’ on emails to avoid OPMA violations. In July 2022 – just prior to the above violations taking place –Smith sent an email with a spring bear motion attached, telling Rowland, Lehmkuhl, and former Commissioner Ragen, “FYI do not reply here.” DOCUMENT 8.

Commissioners received similar reminders from the Attorney General’s office in July, August, and September 2022. DOCUMENT 17, DOCUMENT 18.

We’ve also obtained emails between WDFW staff at multiple levels expressing clear discomfort regarding the behavior of the named Commissioners. Staff at all hierarchies have lamented how outside the law the Commissioners have operated. A high-level staff member wrote: “I may have to file my first PDR. This is absolutely egregious . . . How would we even begin to explain this to the public? Just when I thought the credibility of the Commission couldn’t get worse. This is a travesty.” DOCUMENT 19.

If WDFW staff have lost all trust in their guiding board, how could the public possibly have any inkling of hope the named Commissioners are adhering to the statutory requirements of OPMA, or anything else for that matter? Yet, despite reminders from each other, the Attorney General, and WDFW, four Commissioners met to have substantive

discussions anyway, and they then daisy-chained Chair Baker, as needed, to obtain a majority vote. Governor, the evidence is clear. These Commissioners have engaged in a routine practice of flouting the OPMA, excluding the public, meeting in secret, and lobbying votes to support their ideological ends. They have no real interest in serving the public, but rather, offer sham proceedings to justify their decisions, often made weeks in advance of any opportunity the public is given to view proposals or provide input. If the Governor needs solid evidence of incompetence or misconduct to remove the named Commissioners, he need look no further.

### **III. Incompetence—Mistreatment of staff.**

Through public records requests and litigation required to get the requested records, we know that the named Commissioners mistreat WDFW staff on a routine basis, especially when it comes to responding to public records requests.

In a March 5, 2025 office chat, two WDFW employees acknowledged that Commissioners Smith and Rowland “are the worst to” a staff member who works on public records requests. DOCUMENT 20. They go on to say “There is no way to make them [Smith and Rowland] behave better. Some of them just think this [public records requests] is beneath thm [sic].” *Id.*; *see also id.* (“How dismissive they are about PRRs.”) These two staff members realize that they are stuck with the Commissioners’ behavior. *Id.* (“I know, we take what we can get.”).

That same day, the mistreated public records staffer and another staff member were trying to set up a call with Smith to discuss a public records matter. They knew how Smith would respond to the meeting. “She’s tickled, I’m sure. Lol.” DOCUMENT 21. “[S]he was actually being extremely pleasant on the phone just now! I was pretty shocked haha.” *Id.*

Staff should never be shocked when leaders are being pleasant. But it seems that Smith had ulterior motives with her kindness. She wanted the meeting to go for hours, “[p]robably because [sic] she wants you to do for her what you're going to be coaching her through doing.” *Id.* But when that didn’t happen, Smith reverted to typical behavior of mistreating the staff member on that meeting, which took place the following day. Smith “raise[d] her voice and spoke to [the staffer] in a very aggressive manner.” DOCUMENT 22. The staff member was merely trying to explain things to Smith—things that had already been explained to her “in a meeting the day before.” *Id.* The staff member summarized Smith’s actions to her superiors:

[Commissioner Smith’s] demeanor is completely unprofessional and it is clear that she is bullying in an effort to get her way – i.e. not complying with the PRA.

*Id.*

Mistreatment of staff is bad enough. But here, it’s gotten to the point that it is detrimental to productivity. And without belaboring the point, PRA requests serve as a basic check on government accountability, and these Commissioners obviously do not believe they owe anything to anyone, not even simple professionalism to try and fulfill a request from the public in a reasonable amount of time. Senior staff members at WDFW clearly have their hands tied when it comes to Commissioners’ behavior: “we do not have effective ways of holding Commissioners accountable to demonstrating DFW values.” DOCUMENT 22. Fortunately, the Constitution and the legislature have given the Governor the power to remove Smith for this reason alone. And that should occur here.

#### **IV. Incompetence—Unwillingness or inability to fulfill public records requests.**

Records received during discovery show that Commissioners routinely fail to comply with WDFW requests for records, delete substantive records, utilize personal communication channels for Commission business, mistreat public records staff (see above), and are generally unwilling or unable to provide the requested records, placing WDFW at legal risk and cloaking Commission decisions in secrecy. The legislature has determined that Washington’s citizens, “in delegating authority [to government agencies], do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” RCW 42.56.030. Rather, “[t]he people insist on remaining informed so that they may maintain control over the instruments that they have created.” *Id.* The named Commissioners do not agree.

The severe lag in receiving a mere handful of records in response to Petitioner’s original PRA request is obviously driven, in part, by Commissioners who did all within their power to fail to deliver. Commissioners were provided with individual requests, due dates, and multiple reminders, yet a year and a half after Petitioner submitted its request, Commissioners continue to ignore both the request itself and staffs’ pleas for completed searches. For instance, Rowland ignored all correspondence from public records staff for at least four months, asking staff not to follow up with her in the interim. DOCUMENT 23. And Smith did not act on the request for over a year. DOCUMENT 24. Delays have become so routine and egregious that WDFW staff have had to remind Commissioners that it’s “very important that [Commissioners] respond immediately. We cannot close this request without your response. Extending requests puts the agency at unnecessary risk.” DOCUMENT 25. Staff, in March 2025, 18 months after Petitioner submitted its request,

again had to remind Commissioners that the request “is involved in litigation and needs to be prioritized.” DOCUMENT 26.

Petitioner refers to DOCUMENT 27 as illustrating several things at once, including serving as a clear example of the extreme lengths these Commissioners will go to hide their illegal activities from the public. This document consists of an email chain from December 2022 which clearly shows Rowland responding to another PRA request made by a completely different person from the US Sportsmen’s Alliance, regarding her *ex parte* communications with parties unknown *during the November 18 2022 Commission meeting while the Commission was considering public business*. And not just communicating; Rowland was taking direction on how to amend the Smith motion to cancel spring bear hunting forever. This underlying PRA request to that other individual was fulfilled in January 2023, but more importantly, Petitioner did not receive this key document, responsive to its own 2023 request, until after filing suit for production of documents in 2025, *more than two years later*. Although Rowland complains that Petitioner’s PRA request is “too long,” our request clearly asks for any and all communications between her and other parties during Commission meetings. DOCUMENT 26. When she read our request, there is no possible way she wouldn’t recall that DOCUMENT 27 was responsive, among other documents, yet she failed to respond to staff requests for months on end. At once, DOCUMENT 27 exhibits Rowland’s stonewalling, incompetence, and a desire to keep things hidden from public view. These are all grounds for her removal, and DOCUMENT 27 is all that is needed to remove her immediately for cause. And we know that Chair Baker was included in the email chain back in 2022, likely due to Rowland’s OPMA violation, yet provided zero

leadership that Petitioner's PRA request for materials like this were provided in a reasonable amount of time.

Commissioners also routinely utilize personal communication channels, such as personal email addresses and text messages, to conduct Commission business. Petitioner has a multitude of emails from WDFW staff reminding Commissioners, *ad nauseum*, not to do this. As such, WDFW public records staff cannot conduct records searches for these channels, and Commissioners have deleted substantive messages and have been unwilling or unable to effectively search their personal channels. Rowland thought she deleted a substantive text message (that was subject to a separate public records request) but later found it. DOCUMENT 27. Lehmkuhl needed WDFW staff help searching his personal communications, DOCUMENT 28, and he admitted to deleting or losing responsive emails from a personal account *after* Petitioner's records request was submitted, DOCUMENT 29. And suspiciously, Rowland and Smith have failed to turn-over *any* text messages responsive to Petitioner's request. It cannot be credibly claimed that no such text messages exist.

Additionally, concerning Petitioner's records request, Rowland stated: "This PDR is ridiculously long and complex. I cannot respond without help." DOCUMENT 26. Four months later, she maintained that the request is "ridiculously long" and that she "cannot respond." DOCUMENT 30. To highlight her inability to maintain and search her own personal communications, Rowland required dedicated staff help for her searches, DOCUMENT 31, and she also required the aid of her husband (who is not a Commissioner or government employee) to complete her personal searches, DOCUMENT 32. Smith required WDFW staff to create a specific 'search plan' to effectively search her personal Gmail email account. DOCUMENT 33. She also determined, on separate occasions, that

she did and did not have records responsive to Petitioner's request in her personal communications, telling staff "Told you I was bad at this!" DOCUMENT 34. Smith also told WDFW staff that she was "finding it very difficult to complete these searches" and that she needed more time and information to even begin searching her personal communications. DOCUMENT 35. To be clear, there is nothing confusing or complex about Petitioner's PRA request. Although it is thorough, all of the issues are fairly presented and succinctly described. And all issues would be more easily searched if Commissioners only utilized provided government communications channels.

The named Commissioners have repeatedly shown that they are unwilling or incapable of complying with Chapter 42.56 RCW, exposing the WDFW to legal risk, and more importantly, defying the public's trust in and reliance on a transparent government. They lack the technical know-how, knowledge of best practices, and interest in maintaining and accessing their own communication records in a timely manner, if at all. As fully discussed above, the named Commissioners have routinely failed to carry out the duties required for service on the Commission. While some of this is the result of malfeasance, it's also become clear to Petitioner that the named Commissioners have shown a lack of interest in serving.

#### **V. Incompetence— Uninterested in serving on the Commission.**

Certainly, the named Commissioners have proven their lack of interest in fulfilling PRA requests, as required by law. This lack of interest has called into question their desire to serve on the Commission by WDFW staff. In a February 2025 staff chat, one staffer remarked, "seriously all these people I'm a little like, do y'all actually want to have this position?" DOCUMENT 21. Actions of colleagues, and especially superiors, should never

make co-workers question each other's dedication to a role. This is especially true for a voluntary, decision-making role such as a Commissioner.

But it's not just WDFW staff that question Commissioners' interest in serving. Smith herself has outwardly said as much. After the Washington Supreme Court ruled<sup>7</sup> that Smith was illegally serving in two appointive roles (Commission and a county planning commission) and that she would have to resign from one, Smith told reporters "I was going back and forth (on resigning.) When the lawsuit came, I thought, 'Well, that makes it easy.'"<sup>8</sup> Smith was wishy-washy on continuing her service prior to the lawsuit, yet she continued with the appeal in an attempt to maintain influence in both roles. Smith does not care about the law, the public's wishes or funds, or adhering to appropriate processes – she cares about power. The public cannot maintain any reasonable expectation that Smith has an interest in serving in her role as Commissioner – certainly not with respect to executing the mandates incumbent to the role.

## **CONCLUSION**

Petitioner has the right to petition the Governor through the First Amendment of the United States Constitution, as well as through the Washington Constitution. Petitioner is exercising that right to respectfully ask the Governor to remove Commissioners Barbara Baker, John Lehmkuhl, Lorna Smith, and Melanie Rowland for cause from the Washington Fish and Wildlife Commission. The power of removal is granted to the Governor via the Washington Constitution and Washington law, and multiple Washington courts have affirmed that power. A 2024 report commissioned by the Washington legislature called into

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<sup>7</sup> <https://nwsportsmanmag.com/washington-supreme-court-rules-against-inslee-lorna-smith/> (Last visited May 15, 2025).

<sup>8</sup> <https://capitalpress.com/2024/10/18/sportsmen-group-scores-win-from-washington-supreme-court/> (Last visited May 15, 2025).



question the effectiveness of the Commission. Petitioner agrees that the Commission is ineffective, but believe that its ineffectiveness stems from incompetent Commissioners, not the Commission structure itself.

Specifically, Commissioners Baker, Lehmkuhl, Smith, and Rowland have shown a consistent pattern of mistreating staff, excluding stakeholders from exercising their Constitutional right to be heard, failing to comply with lawful requests for communications records, and conducting Commission business in secret. These infractions rise above mere accidents or missteps; rather, as outlined above, these Commissioners have acted deliberately, with obvious and repeated disregard for Constitutional rights and Washington law. They have routinely exposed their incompetence, misconduct, and malfeasance, and they should be removed. Their further service on the Commission will continue to weaken and crater the public's trust in government and public officials, and they will continue to expose the WDFW and the state to further legal liability. They are unfit to serve, and we respectfully ask that you exercise the power granted to you by the legislature and the Washington Constitution to put an end to these ongoing abuses without delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Heusinkveld". The signature is stylized with a large, sweeping initial "E" and a long, horizontal stroke at the end.

Evan Heusinkveld  
President and Chief Executive Officer  
Sportsmen's Alliance