Nick Beduhn WSB# 6-3763
P.O. Box 1149
Buffalo, WY 82834
307-899-2338
nick.freedomfighter@gmail.com

IN THE FOURTH DISTRICT COURT
FOR THE STATE OF WYOMING

Crosby Taylor, et al.,	)	
Petitioners	)	
vs	)	Case No . CV-2021-0009
	)	
Governor Gordon, et. at.,	)	
Respondents	)	

PETITIONERS' REPLY TO RESPONDENT'S' MOTIONS TO DISMISS

COMES NOW the Petitioners through their attorney Nick Beduhn, to reply and oppose the Motions to Dismiss filed by the Respondents.

As to the error of the discrepancies between the headings of the Petition and the summons, it was the result of staff mistakenly copying the first page from an older draft rather than the final Petition that was filed; and unfortunately, not noticed by Petitioners' attorney. Petitioners' attorney apologizes for the confusion that it's caused. As the two individuals identified by the Respondents were not in the body of the Petition, there was nothing and no reason to address them. Aside from some minor confusion, the error was

harmless, and again, Petitioners' attorney apologizes to the AG and the court.

Before addressing the itemized reasons set forth by the AG, I bring forth to the court the off-the-cuff response of one of the Petitioners upon reading the AG's memorandum in support, which simply was: “OH the irony! While objecting that we didn't meet a certain standard, which is discretionary, they failed to meet not only the statutory criteria regarding the declaring of an emergency, but didn't even try to comply with known legal standards such as least restrictive means and narrowly drawn approach.” That not only pretty well sums up the position of the Respondents, but Petitioners advance the clean hands doctrine which the Petitioners pray the court will apply to its decision. With only a few exceptions, the wide-spread attitude of the Respondents can be summed as:

> “Follow and obey our orders and mandates whether they be legitimate or not; or even unlawful, or we will punish you by criminal charges and possibly even attacks from other governmental departments such as the Dept of Revenue.”

And this attitude continues in Respondents' memorandum in support with the first two sentences of the Introduction/Background on page two:

> “The petition is essentially a catalogue of general grievances and overall dissatisfaction with how the respondents have handled aspects of the COVID-19 pandemic. Based upon their unhappiness and dissatisfaction, . . .”

The Respondents continue this attitude and mischaracterization on page three:

> “This lawsuit is a classic example of the type of case that the justifiability requirement is intended to preclude: a case that raises purely academic

> matters, brought by persons who have no genuine right or intent at stake and whose unhappiness about the general operation of state government gives them a political axe to grind. Indeed, petitioners intend this to be a public interest lawsuit to air grievances about how respondents have handled the COVID-19 public health emergency. This is confirmed by the fact that petitioners have also brought this lawsuit on behalf of 'others similarly situated.' Petitioners' fatal flaw is that they have failed to allege any specific facts that a judgment in their favor will have an immediate and real effect on them."

These statements are a complete mischaracterization and an attempt by the Respondents to minimize the intent and purpose of the Petitioners and their Petition. To be clear, the Respondents have directly caused the greatest upheaval of society in the history of Wyoming. And they have achieved unnecessary and across-the-board damages to individuals and society totally by way of ignoring State and federal statutory criteria and requirements and by completely ignoring mandatory legal standards. The damage done to the citizens of Wyoming, from the closing of businesses, to meaningless testing made meaningless by using an easily manipulated procedure not meant designed for diagnostic testing, to contradictory mask recommendations and mandates, is all directly attributable to the unlawful decisions and actions of the Respondents. The unlawful decisions and actions of the Respondents have resulted in numerous Rights violations that have affected EVERY Wyoming citizen. The Petitioners are but a very, very tiny few that are willing to stand up against the unlawful acts of the Respondents.

Thus, to be clear, this is a legal challenge to the Respondents' unlawful actions and

decisions. To be plain-spoken and precise, the Respondents mischaracterized and are trying to minimize the Plaintiffs' actual legal challenge as “grievances and overall dissatisfaction”. Yet, it is to the Respondents' repeated failure and refusal to comply with State and federal statutory criteria and requirements and mandatory legal standards even after their questionable legality was pointed out to them by citizens including some Petitioners. The various so-called “aspects” which the Respondents try to minimize and mischaracterize are legal standards; not mere “unhappiness” or simple “dissatisfaction”. The Petitioners submit that questions of governmental authority – especially during times of a legitimate or alleged emergency – is one of the most important issues that a free society will ever face. And it is from this posture that Petitioners have taken a stand and filed this Petition.

A plain and obvious reading of the petition raises the most serious legal issues and questions, not “purely academic matters”. The issues brought by the Petitioners before this court are not “political”, but legal: A fair and proper reading and application of statutes; proper application of long held legal standards; proper adherence to standard medical practices and procedures. How many provisions of our State and federal constitutions can governmental actors ignore during an actual or alleged emergency? Clearly, these are not “political”; but legal issues and questions.

One of the few things fairly stated by the Respondents is that this ***is*** “a public interest lawsuit”; a lawsuit brought by a few “knuckleheads”, as Respondent Gordon likes to

publicly refer to them. This lawsuit is exactly the type of case for which the justifiability requirement is intended.[1] Contending just the opposite, the Respondents assert that "this is confirmed by the fact that petitioners have also brought this lawsuit on behalf of 'others similarly situated.'". How so? How does setting forth 'others similarly situated' confirm

---

1. **See**: Staehr, Amy (2010) "Civil Procedure - The Wyoming Supreme Court Constricts the Public Interest Exception of the Declaratory Judgments Act; William F. West Ranch, L.L.C. v. Tyrrell, 206 P.3d 722 (Wyo. 2009)," Wyoming Law Review: Vol. 10 : No. 1 , Article 5. Available at: https://scholarship.law.uwyo.edu/wlr/vol10/iss1/5
at pg. 153 **The Third Brimmer Element & The Public Interest Exception**
"The Brimmer court stated the controversy must be one in which the court's decision will have the effect of a final judgment regarding the law or a legal relationship, or "wanting these qualities to be of such great and overriding public moment as to constitute the legal equivalent of all of them."90 Further articulating the public interest exception, the Brimmer court stated, "[T]here is a well recognized exception that the rule requiring the existence of justiciable controversies is not followed or is relaxed in matters of great public interest or importance."91 The third Brimmer element clearly states that if a matter of great public interest is implicated in a case, it can stand in for the legal equivalent of a justiciable controversy. 92 Nevertheless, the exception must be employed with caution.93

A year after Brimmer, the court stated in Cranston v. Thomson that in the absence of the other Brimmer elements, an overriding public interest alone was not enough to assert justiciability.94 However, the Brimmer version of the public interest exception prevailed in several subsequent cases.95 Fifteen years after Brimmer, in Memorial Hospital v. Department of Revenue & Taxation, the court extended the exception from "a relaxation of the requirement for a justiciable controversy to a justification for standing," stating:

> Declaratory relief should be liberally administered if the elements of a justiciable controversy exist to give the trial court jurisdiction. For that controversy to exist, a genuine right or interest must be at issue between adversarial parties, and the trial court must be able to make an effective judgment which will finally determine the rights of the parties. Even these prerequisites, however, may properly be avoided or relaxed when matters of great public interest or importance are presented to the trial court.96"

. . . .
at pg 155: "Oftentimes, after determining the issue was of great public interest, ***the court dispensed with applying the Brimmer test, finding the existence of a great public interest gave the court jurisdiction over the matter***. In other cases invoking the public interest exception, the court discussed the Brimmer test and stated the plaintiffs met all four elements. A number of these cases are worth a close look because the court's application of the Brimmer elements allowed wide latitude regarding the manner in which the plaintiffs met the elements. For example, the first Brimmer element was noticeably relaxed in Washakie County School District No. One v. Herschler, a case in which the appellants challenged Wyoming's system of financing public education. In their briefs, the appellants asserted the unconstitutionality of "the system of financing public education" rather than identifying a particular statute. 106 ***The court found further specificity unnecessary*** ***<u>because in their pleadings the appellants had shown a complete understanding of the statutes</u>***

their contention? Frankly, neither the Petitioners nor their counsel understand the Respondents reasoning. All 'others similarly situated' expresses what has come to pass: that Petitioners, and their counsel, thought and expected that once citizens saw a few of their fellow citizens willing to stand up and make a legal challenge against the Respondents' unlawful acts, many more would come forth and be more willing to do the same. And, as expected, this is exactly what has been happening as word of the case has spread amongst the citizens. And while the facts and particular situation of each person differs, the legal issues and questions are the same. This raises the questions, how does and what is the proper approach as a few grows into dozens, which in turn will likely grow into the hundreds? Is the proper approach and solution to file dozens of public interest lawsuits – each one of them raising the same legal issues and questions? Does the AG really want to have to field dozens of lawsuits by hundreds of citizens? Or was the public interest exception intended to prevent just such a situation?

The Petitioners believe, and therefore contend, that not only have they met the first two requirements of the Brimmer[2] test, but that even if they haven't, this case is clearly a public interest case exception. As such, the Petitioners, each and every one of them, have standing; and the court has jurisdiction.

And last, but not least, in their attempt to mischaracterize and minimize the intent and

and how the statutes affected them." (footnotes omitted; emphasis added)

2. Brimmer v. Thomson 521 P2d 574

purpose of the Petitioners and their Petition, the Respondents contend that:

> "Petitioners' fatal flaw is that they have failed to allege any specific facts that a judgment in their favor will have an immediate and real effect on them."

To this the Petitioners concur in part and disagree in part. The Petitioners agree that it was not out-right stated in the petition that:

> "A judgment in their favor and against the Respondents will result in allowing the Petitioners to get back to a normal life where they can freely speak and associate as they so choose, without fear of retaliation; and where they can make decisions, including medical decisions pursuant to Article 1 § 38, that are based upon known and long held standards of practice and procedures as they think is best for themselves and their dependents, without retaliation or the threat of retaliation. A judgment in their favor and against the Respondents will result in allowing schools and libraries to reopen allowing normal educational standards to resume. And by allowing libraries to reopen, it would open the these taxpayer public spaces to be fully utilized as they have been designed such as open and safe space for public gatherings such as business conferences and political meetings."

Quite frankly, the Petitioners thought such causality was obvious. The Petitioners assert that putting an end to the unlawful acts of the Respondents, which would result in getting life back to normal for all citizens, including the Petitioners, would, axiomatically, "have an immediate and real effect on them". And while the Respondents may not understand this, the Petitioners have total confidence that the court does.

Nevertheless, rather than being a fatal flaw, the Petitioners contend that if the court feels that such obvious conclusions and effects must be out-right stated in the Petition, that the court simply allow the Petitioners to file a motion to amend their petition accordingly.

Following their attempt to mischaracterize and minimize the intent and purpose of the Petitioners and their Petition, Respondents raise specific assertions and objections to specific Petitioners. These assertions and objections fall into two categories:

a. Not enough facts were stated as to the rights of each petitioner.
b. Not enough facts were stated as to damage to each petitioner.

The Respondents also complain that certain entities, such as the Dept of Revenue, were not included as respondents. Addressing this lack of inclusion first, Petitioners direct the court's attention to the listed “DOES 1-100”. Petitioners assert that this referencing of "Does 1-100" covers all such entities and individual personnel such as the Dept. of Revenue and individual employees within the Dept., as well as libraries and recreation facilities and the employees of such entities. The Petitioners believe that it is not necessary nor required to itemize and list every individual by specific name. Put another way, is it a requirement to list the corporals and privates each individually?[3] Or is listing the Generals sufficient?

As to the specific objections of each Petitioner:

In his affidavit, Crosby Taylor stated in part:

> “I then received a follow up email stating that he, Director Noble, had acted at the direction of the governor’s office. Worse yet, the email response makes it clear that it is because I choose to exercise my right to express myself regarding the current situation and my feelings about Governor Gordon.”

3 Some of whom are still unknown. Some of whom are expected to come to light through testimony and examination.

(Pet. Ex.1; emphasis added)

Clearly, Petitioner Taylor DID NOT have a tax problem; or any problem with the Dept of Revenue. Petitioner Taylor was exercising his Right to express himself[4], and he was then targeted – BY Respondent Gordon no less. But rather than retaliating directly, Gordon tried to use the Dept of Revenue as a weapon against Taylor. Respondents' counsel tries to totally twist this targeting and retaliation into "a dispute about purchasing liquor for their bar . . . and a dispute about sales tax delinquencies." (Resp. Mem. pg.4) This is a completely false statement by Respondents' counsel as will be proven with e-mails and tax records when Petitioner Taylor gets to testify.

The limited issue before the court is whether Petitioner Taylor has standing or not. Respondents' contention is that: a. Not enough facts were stated as to the rights of each petitioner. And b. Not enough facts stated as to damage[5] to each petitioner. Petitioners' counsel respectfully submits that on his own, Petitioner Taylor meets the Brimmer test and that the answer to his standing is in the affirmative.

Respondents' objection to Petitioner Skagen is not really an objection at all; but rather just a restatement of what she stated in her affidavit. Petitioner Skagen brings two separate issues to the court. The first is her rights as are protected by Article 1 § 38 of the Wyoming Constitution. The second is the damage done to her and her family directly

4 See Petitioners Memorandum in Support attached hereto.
5 Id.

attributable to the unlawful actions and decisions of the Respondents. Furthermore, Petitioners submit that maintaining a family "as a unit" is in itself a natural right. Petitioners believe, and thus contend that there is no authority – even during an actual emergency – to issue broad mandates that interfere with the sanctity of a family unity. Whether or not she expressed enough in her affidavit to meet either of the first two prongs of Brimmer is for the court to decide. But the legal issues brought before the court by Petitioner Skagen are in part, why this case meets the public interest exception. For example, issuing orders and mask mandate without fully informing the citizens of the right to refuse which is a violation of Title 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III).

Petitioner Janelle Willert will not be addressed for the reason that she was just re-inserted back to the Petition in its amended filing; and thus, was not and could not be addressed by the Respondents.

After summarizing the facts regarding Harold Bjork, Respondents counsel contends that his allegation "concern the Mayor of Rock Springs, . . and the Chief of Police . . ."; "but not any of the respondents in this case." While the first statement is correct, the second is not as the entire situation 'with the mayor and Chief of Police' would not even have occurred had it not been for the unlawful acts of Respondents Gordon, Harrist, Ceballes, Stachon, and Wyoming Dept. of Health. In essence, the Generals want to place all the blame for the very clear rights violation on the privates and corporals. In short, Petitioner Bjork

not only stated that he was trying to exercise a right, but then how he was prevented and even punished for doing so. Clearly, Petitioner Bjork's standing meets the Brimmer test.

Additionally, Petitioners hope the court will take note that the Bjork incident is not unique. Petitioners believe and contend that hundreds across the State have been harassed, threatened and/or criminally charge for doing nothing more than trying to exercise one right or another. Petitioners' paralegal has personally talked with dozens of individuals across the State who are too scared of retaliation and ultimately choose not to be a Petitioner. Nothingtheless, the rights violations of such individuals is just as real as Petitioner Bjork's. This underscores why this is a public interest exception under Brimmer.

After summarizing the facts regarding Jessica McComb, counsel for the Respondents simply states that the school is not named as a Respondent. There is no claim that she does not have standing. Petitioner McComb clearly has standing. And the school, lower in rank to the Generals, is included as one of the 1-100 Does.

Petitioner Tamara Weaver will not be addressed for the reason the she was just accepted as a Petitioner in the amended filing; and thus, was not and could not be addressed by the Respondents.

The objection to Petitioner Billie Eckhardt is that "the charges were dismissed." What is ignored by Respondents' counsel is the rest of the story.

> "Petitioner Eckhardt later learned that the county attorney is keeping the door open to refiling the charges. Since learning of this, Petitioner Eckhardt has to

> live under duress daily; wondering if this day will be the day criminal charges are refiled against her. And, when they are, will it be by citation. Or will she be arrested?"

Not only is there no claim that she does not have standing, but it is axiomatic that no citizen should have to live in fear from any government officer or personnel. And once again, the entire situation was directly caused by the many and repeated unlawful acts of Respondents Gordon, Harrist, Ceballes, Allais, and Wyoming Dept. of Health.

Respondents' counsel summarizes Petitioner Melody Nielson's allegations as: "general complaints about the struggles of all Wyoming citizens ..." Petitioners' counsel accepts this as an admission that this case is a public interest case. When was the last time that government officials, from top to bottom, with only a few limited exceptions, totally turned our entire society upside down and inside out with such out-right, non-stop, repeated and direct unlawful actions?

Beyond that, Petitioner Nielson stated that she belonged to different groups that were gravely affected. Her rights to freely express her religious beliefs, to peaceably assemble and expression were totally trampled on by the direct and repeated unlawful acts of Respondents Gordon, Harrist, Ceballes, Hartman, and Wyoming Dept. of Health. As such, on her own merits, she meets the first two prongs of Brimmer.

As to Petitioners Conservative Corner and Love America Laramie, Respondents' counsel merely summarizes their statements; but makes no claim that they lack standing or

that the court lacks jurisdiction. In addition to having standing as parties of interest in this public interest case, these Petitioners rely on the sacredness of their first amendment rights[6] which have been seriously trampled upon by several of the Respondents.

Petitioners respectfully submit that each and every one of them meets the Brimmer test and that this case clearly qualifies as a public interest case. For all that is said in the Respondents' memorandum in support of their motion to dismiss, they actually said very little to actually support their motion. It's filled with summarizations and lies – some by distortions and some by omissions. And contrary to the contention that the Petition fails to contain “essential facts”[7], the Petition is filled with essential facts as to all the Petitioners and to the merits of the unlawful acts of the Respondents.

This finally brings us to the argument and contention that there is no justifiable controversy[8] as is asserted by the Respondents. What? The Petition is rife with justifiable controversies and filled with serious legal issues and questions, along with reasonable meaningful relief to settle those controversies and legal issues.

Added all together, as set forth herein, the Petitioners believe and assert that they have met and satisfied the pleading requirements to be heard on the merits of the case and the relief sought. Not only is it a public interest case, but of the highest order.

Last but not least, Respondents object to Petitioners' request of a writ of mandate

---

6 Id.
7 Respt's Memorandum in support at pgs. 7-8.
8 Id. pg.8

within Count four. To the extent of the context of this case and the many and repeated unlawful acts of the Respondents acting in accord with the many corporals and privates (Does 1-100 such as all the various testing facilities), the Petitioners included such for the court's consideration. Nevertheless, Petitioners assert that the inclusion of a writ of mandate request is not a basis for dismissing the entire case, but at most simply denying that portion of the relief sought. Furthermore, Petitioners have also sought “such other relief as the Court deems necessary to prohibit and/or deter any and all of the Respondents from acting outside of proper statutory and/or constitutional authority.”

Submitted this ________ day of April, 2021.

____

Nick Beduhn WSB# 6-3763
P.O. Box 1149
Buffalo, WY 82834
307-899-2338
nick.freedomfighter@gmail.com

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I served a copy of the foregoing Petitioners' Reply To Respondent's' Motions To Dismiss a copy thereof to all current Respondents this ______ day of April, 2021.

____

Nick Beduhn