

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
JOHNSON COUNTY, WYOMING**

CV-2021-0009

CROSBY TAYLOR, et al.,)
)
Petitioners,)
vs.)
)
GOVERNOR GORDON, et al.,)
)
Respondents.)

MOTION TO DISMISS

COMES NOW Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, by and through Michael J. Crosson, Sublette County and Prosecuting Attorney, and respectfully moves this Court to dismiss the above-captioned action as it pertains to Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, and provides the following defenses in support thereof:

1. **IMPROPER VENUE** WRCP 12(b)(3): The District Court of the Fourth Judicial District in and for Johnson County Wyoming is not the appropriate venue in which Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, may be sued. WYO. STAT. ANN. § 1-5-104 provides in pertinent part: (a) *Actions for the following causes shall be brought in the county where the cause or some part thereof arose:(ii) Against a public officer for an act done by virtue or under color of his office, or for a neglect of his official duty.* Petitioners fail to allege that any action or inaction by Dr. Fitzsimmons occurred in Johnson County, Wyoming.

2. **INSUFFICIENT SERVICE OF PROCESS** WRCP 12(b)(5): Petitioners have failed to properly serve Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, as required by Rule 4 of the Wyoming Rules of Civil Procedure. In lieu of serving Dr. Fitzsimmons, an unknown person served the Sublette County Clerk. Additionally, for the sake of argument, if Dr. Fitzsimmons is an officer of Sublette County entitled to representation by Sublette County, which is disputed by undersigned counsel, the Board of Sublette County Commissioners were not

properly established as a Respondent party in Petitioners' pleading. WYO. STAT. ANN. § 18-2-109 provides, "In all suits or proceedings the county *shall* sue or be sued as the "board of county of the county of," but this shall not prevent the county officers when authorized by law from suing in their name of office for the benefit of the county." This "Petition For Declaratory Injunctions And Writ Of Mandamus" failed to allege the Board Of County Commissioners Of the County Of Sublette as a party to the action, and therefore the interest of justice require dismissal for failure to comply with mandatory statutory requirements. Finally, the Summons issued to the Sublette County Clerk did not bear the seal of the clerk as mandated by Rule 4(a)(7) of the Wyoming Rules of Civil Procedure, and is attached hereto and incorporated by reference herein as Respondent Dr. Brendan Fitzsimmons's Exhibit A.

3. INSUFFICIENT PROCESS WRCP 12(b)(4): Counsel for Petitioners has failed to comply with Rule 11(a) of the Wyoming Rules of Civil Procedure which requires all pleadings be signed.

4. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED WRCP 12(b)(6): Petitioners repeatedly requests that the Court issue a 'Declaratory Injunction' in each of Counts One through Six, a prayer for relief that does not exist under the laws of the State of Wyoming. Further, Petitioners request the issuance of a 'Writ of mandate' in Count Four. Assuming that this is a request for a Writ of Mandamus, pursuant to WYO. STAT. ANN. § 1-30-101 *et seq.*, Petitioners have failed to follow the proper procedure described therein to establish a cause of action, nor is Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, an appropriate person to which a Writ of Mandamus may be issued as requested in Count Four of the *Petition*.

5. FAILURE TO JOIN A NECESSARY PARTY UNDER RULE 19: Assuming *arguendo*, that the Sublette County Health Officer is an officer of Sublette County as opposed to the State of Wyoming, the Sublette County Board of Commissioners are a necessary party to the action pursuant to WYO. STAT. ANN. § 18-2-109 as previously stated. Petitioners' omission of Sublette County Commissioners from their pleading served is a fatal flaw for failure to adhere to mandatory statutory requirements, warranting dismissal of the Sublette County Health Officer from this action. Failure to include the Sublette County Commissioners as a necessary party impedes the Board's ability to protect their interests on behalf of the Sublette County Health Officer, if Petitioners are correct in their apparent assumption that County Health Officers are under the direction and control of the Board of Commissioners. There is statutory guidance upon which undersigned counsel asserts that the Sublette County Health Officer is not a County Officer, but

Taylor, et al. v. Gordon, et al.

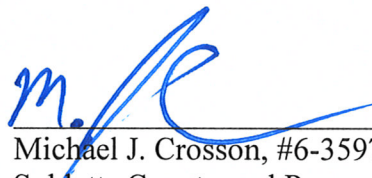
RSPDT. DR. BRENDAN FITZSIMMONS, SUBLETTE CTY HLTH OFFR.: MOTION TO DISMISS

rather an Officer of the Wyoming State Department Of Health. WYO. STAT. ANN. § 35-1-227 provides, “*The county health officers of this state shall be under the direction and supervision of the state department of health, and the state department of health shall have authority to make such rules and regulations for the government and direction of said county health officers as in their judgment may be best suited to maintain public health.*” This statutory language could not be more clear. The County Health Officer is not a county officer, but rather a state officer under the sole authority of the Department of Health in all respects excepting the appointment and removal power statutorily bestowed upon the Board of County Commissioners pertaining to County Health Officers. Additionally, WYO. STAT. ANN. § 35-1-220 provides in pertinent part, “*The attorney general of Wyoming shall be the legal advisor for the department of Health and shall defend it in all action and proceedings brought against it.*” For the foregoing reasons, the undersigned asserts that Sublette County is not a proper party to this action and service of process, fatally flawed in its own right as it was notwithstanding, was not appropriately served upon the County Clerk, because Sublette County is not a proper party to this action.

WHEREFORE, the undersigned respectfully moves the Court for an order dismissing this action against Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, or, in the alternative, an order setting a hearing regarding this issue at the Court’s convenience.

DATED this 23rd day of March, 2021.

BY:

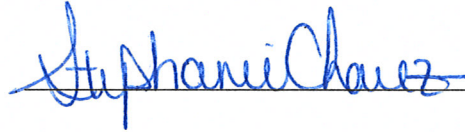


Michael J. Crosson, #6-3597
Sublette County and Prosecuting Attorney
P.O. Box 1010
Pinedale, WY 82941
(307) 367-2300

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on the 23rd day of March, 2021 by placing a true and correct copy thereof in the U.S. Mail, first class postage prepaid, and addressed to:

Nick Beduhn
P.O. Box 1149
Buffalo, WY 82834
Nick.freedomfighter@gmail.com

_____

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
JOHNSON COUNTY, WYOMING**

CV-2021-0009

CROSBY TAYLOR, et al.,)
)
Petitioners,)
vs.)
)
GOVERNOR GORDON, et al.)
)
Respondents.)

ORDER UPON MOTION TO DISMISS

UPON MOTION by Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer, and the Court being generally advised in the premises and finding good cause therefore;

IT IS HEREBY ORDERED that the above-captioned matter is hereby dismissed against Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer.

OR

IT IS HEREBY ORDERED that a Hearing on Respondent Dr. Brendan Fitzsimmons, Sublette County Health Officer's *Motion to Dismiss* in the above-captioned matter is hereby set on the _____ day of _____, 20____, at the hour of _____ o'clock _____.M., in the Courtroom of the Johnson County Judicial Center, 620 Fetterman Street, Buffalo, Wyoming.

DATED this _____ day of _____, 2021.

District Court Judge

Copies to:
Mike Crosson, Sublette County Attorney
Nick Beduhn, Counsel for Petitioners