

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF JOHNSON

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

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED PETITION
FOR DECLARATORY INJUNCTIONS AND WRIT OF MANDAMUS**

Respondents, Governor Mark Gordon; Wyoming Department of Health Director Michael Ceballos; Wyoming State Health Officer Alexia Harrist, M.D.; and the Wyoming Department of Health, through their undersigned attorneys, submit the following memorandum in support of their motion to dismiss the Amended Petition for Declaratory Injunctions and Writ of Mandamus. Petitioners’ amended petition must be dismissed under Rules 12(b)(1) and 12(b)(6) of the Wyoming Rules of Civil Procedure for the same reasons articulated in respondents’ motion to dismiss the original Petition for Declaratory Injunctions and Writ of Mandamus, which is hereby incorporated by reference.

INTRODUCTION/BACKGROUND

Petitioners make two changes in their amended petition by adding two new petitioners, Janelle Willert and Tamara Weaver. (*See* ¶¶ 7 and 10). All other allegations and claims for relief are identical to those in the original petition. The amended petition simply adds Weaver’s and Willert’s allegations to petitioners’ list of general grievances and overall dissatisfaction with how

the respondents have handled aspects of the COVID-19 pandemic. Petitioners' claims are still founded upon principles of declaratory judgment, mandamus, and injunctive relief.

For the same reasons explained in respondents' motion to dismiss the original petition, the amended petition does not present a justiciable controversy, and therefore, petitioners still do not have standing to bring this action. The same fatal flaws and inadequacies remain in the amended petition as in their original petition. For instance, petitioners have failed to allege any specific facts showing how they have a personal stake in the outcome of this case, how the alleged harm they claim to have suffered is traceable to the respondents, and how a judgment in their favor will have an immediate and real effect on them. Accordingly, the Court must dismiss this action because the amended petition does not present an actual justiciable controversy. It is not the function of the judicial branch to pass judgment on the general performance of other branches of government. *William F. West Ranch, LLC v. Tyrrell*, 2009 WY 62, ¶ 32, 206 P.3d 722, 733 (Wyo. 2009).

NEW FACTS ALLEGED

The amended petition does not contain any new general allegations or requests for relief—rather it only contains two new petitioners and their specific grievances, which are unrelated to the general allegations or requested relief. Weaver complains that her daughter, DW, had “panic attacks over the thought of wearing a mask.” (Am. Pet., p. 4). Weaver also contends that the principal of her daughter's school, identified as “Principal Limoge”, violated DW's rights under the Health Insurance Portability and Accountability Act (otherwise known as “HIPAA”) and also violated “all ethical standards[,]” however, the amended petition does not specify what or whose ethical standards were violated. (Am. Pet., pp. 4-5). Weaver contends that the principal had DW's physician's note written about DW wearing a mask altered and began segregating DW from other students in the school because she refused to wear a mask. (Am. Pet., p. 5). Weaver also contends

that she and DW were “doxed by parents and school board members[,]” but those individuals are not named respondents in this case. (Am. Pet., p. 5). Principal Limoge is also not a named respondent in this case.

Willert describes an incident at the county library in Pine Bluffs, where she and her children were told to wear a mask but refused. (Am. Pet., pp. 3-4). The county library is not a named respondent. Willert alleges that as a result of the incident, the library informed her that she was “only allowed to use the Cheyenne Branch of the Laramie County Library system.” (Am. Pet., p. 4). Willert also alleges that the Pine Bluffs county library told her she was going to “be discriminated against and segregated from all other library patrons.” (Am. Pet., p. 4).

ARGUMENT

For the same reasons explained in respondents’ motion to dismiss the original petition (which is incorporated in its entirety here), this Court continues to lack subject matter jurisdiction over this entire lawsuit. Adding Willert and Weaver to the list of original petitioners does not magically cure or fix the original petition and its fatal flaws. This amended petition fails for the same reasons expressed in the respondents’ original motion to dismiss—all of the petitioners fail to present a justiciability controversy because the *Brimmer* elements are not met. See *Brimmer v. Thompson*, 521 P.2d 574 (Wyo. 1974).

For instance, the facts alleged by Weaver and Willert in the amended petition do not meet the first *Brimmer* element. Weaver and Willert have no legally protectable and tangible interest at stake, and they have suffered no harm to any such interest—Weaver and Willert have failed to establish how they have a personal stake in the outcome of the case. Weaver’s and Willert’s allegations have no connection to the alleged actions of the respondents. Weaver’s allegations about Principal Limoge, members of the school board, and other parents, involve disputes that are

unrelated to this case, and unrelated to the respondents named in the amended petition. (Am. Pet., pp. 4-5). Weaver's specific disputes concern Principal Limoge having a doctor's note allegedly altered and allegedly violating HIPAA privacy laws, but those disputes do not present a personal stake for Weaver in the outcome of this case. (Am. Pet., pp. 4-5).

Willert's description of an incident at the county library in Pine Bluffs, where she and her children were told to wear masks but refused, does not describe a personal interest or stake in the outcome of this case. (Am. Pet., pp. 3-4). The alleged "discrimination" Willert complains about concerns the "the county library in Pine Bluffs," not the respondents.

In addition, as explained in the respondent's motion to dismiss to the original petition, petitioners (including Weaver and Willert) have failed to allege sufficient facts showing that their alleged harm is traceable to any of the respondents and have failed to allege any facts showing that a judgment granting their requested relief will have an immediate and real effect on them. None of the petitioners' allegations establish that the remedies they request will lead to an effective remedy for them.

In addition, petitioners' writ of mandamus and injunctive claims in their amended petition fail for the same reasons explained in respondents' original motion to dismiss.

CONCLUSION

For the foregoing reasons, respondents respectfully request that this action, in its entirety, be dismissed with prejudice under Rules 12(b)(1) and 12(b)(6) of the Wyoming Rules of Civil Procedure.

DATED this 15th day of April 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of April 2021, the foregoing was served upon the following:

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