

1 EXPEDITE

2 No hearing set

3 Hearing is set

4 Date: _____

5 Time: _____

6 Judge: _____

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 KURT WILSON and KEVIN RUSSELL,

10 *Plaintiffs,*

11 v.

12 STATE OF WASHINGTON, the
13 WASHINGTON STATE LEGISLATURE, JAY
14 INSLEE, sued in his official capacity as
15 governor of the state of Washington, the
16 WASHINGTON STATE DEPARTMENT OF
17 ECOLOGY, and LAURA WATSON, sued in
18 her official capacity as the Director of the
19 Washington State Department of Ecology,

20 *Defendants.*

21 COMPLAINT FOR DECLARATORY
22 JUDGMENT

23 **I. INTRODUCTION.**

- 24 1. This lawsuit seeks a declaration that RCW 70A.30.010 (“the Act”) is unconstitutional.
25 The Act is attached to this Complaint as Exhibit A.
- 26 2. This lawsuit also seeks a declaration that WAC 173-423-030 (the “Rule”) is impermissible,
27 void, inconsistent with the enabling statute, adopted in violation of the Administrative
Procedure Act, and therefore void. The Rule is attached to this Complaint as Exhibit B.
3. The Act, which the Washington State Legislature passed in 2020, impermissibly delegated
to the Washington State Department of Ecology (“Ecology”) the authority—and indeed,
the mandate—to adopt as a Washington regulation an unknown, unwritten future text that
it predicted would be written by the California Air Resources Board (“CARB”).

- 1 4. That text, as CARB eventually wrote it in 2022 (“ACC II”), will have the effect of banning
2 sales of all internal combustion engine passenger vehicles Washington State as of 2030.
- 3 5. When the Legislature voted in favor of the Act, no such regulatory text existed.
- 4 6. As such, whether the Legislature considered it good or bad policy to ban sales of internal
5 combustion engine passenger vehicles, it did so by impermissible delegation: delegating to
6 Ecology the mandate to adopt a future regulation which would eventually be written by a
7 regulatory body of a different state.
- 8 7. When Ecology adopted the Rule, CARB had not yet adopted its ACC II rule as a final, in-
9 force regulation.
- 10 8. Neither had CARB received the required waiver from the Environmental Protection
11 Administration to comply with the federally pre-emptive Clean Air Act. .
- 12 9. Indeed, as of the date of this filing, the CARB ACC II, as well as WAC 173-423-030 which
13 copies parts of that California program, have still not been approved by the EPA.
- 14 10. Thus, because Ecology proposed a rule whose content was yet at least in part unknown
15 and/or non-final and binding, there was no meaningful notice to the public and no
16 meaningful opportunity to comment, as required by the Administrative Procedure Act.

17 **II. PARTIES.**

- 18 11. Plaintiff Kurt Wilson (“Wilson”) is a resident of Pierce County, Washington.
- 19 12. Wilson owns businesses whose operations rely on the range, reliability, and fast refueling
20 of internal combustion engine vehicles.
- 21 13. Wilson intends to continue purchasing vehicles with internal combustion engines for his
22 business and personal use after 2030.
- 23 14. Plaintiff Kevin Russell (“Russell”) is a resident of Clallam County, Washington.
- 24 15. Russell owns a business whose operations rely on the range, reliability, and fast refueling of
25 internal combustion engine vehicles.
- 26 16. Russell intends to continue purchasing vehicles with internal combustion engines for his
27 business and personal use after 2030.

1 17. Defendants are the State of Washington, the Washington State Legislature, Governor Jay
2 Inslee, sued in his official capacity, and Laura Watson, the Director of Washington State’s
3 Environment and Natural Resources Division, sued in her official capacity.

4 **III. JURISDICTION AND VENUE.**

5 18. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW and chapter
6 7.24 RCW.

7 19. Venue is proper in this Court pursuant to RCW 4.92.010.

8 **IV. STANDING AND JUSTICIABILITY.**

9 20. Plaintiff has standing to bring this action as a resident of the State of Washington adversely
10 impacted by the Act and the Rule.

11 21. Plaintiff expects to purchase passenger and light duty vehicles in the next decade. He will
12 therefore be harmed by the Act and the Rule banning sales of internal combustion engine
13 passenger vehicles by 2030.

14 22. Plaintiff also has standing because the ban on the sale of internal combustion engine
15 passenger vehicles is an issue of serious public importance: it immediately affects
16 substantial segments of the population, and the outcome of this challenge to the Act and
17 the Rule will have a direct bearing on commerce, finance, labor, or industry generally.

18 23. The State of Washington, Governor Inslee, and the Washington State Legislature are
19 proper Defendants in a challenge to the validity of a state law.

20 24. The Director of Ecology is the proper Defendant in a challenge to a regulation promulgated
21 by Ecology.

22 25. Plaintiff has been, is, and will continue to be directly and substantially harmed by the Act
23 and the Rule.

24 26. Each Plaintiff and each Defendant has genuine and opposing interests.

25 27. The Court’s grant of declaratory relief will directly redress Plaintiff’s harms by preventing
26 the Act and the Rule from taking effect.
27

1 28. Plaintiff's claims do not require more time or other legislative or agency action to become
2 ripe because the Act is unconstitutional on its face.

3 **V. FACTS.**

4 **A. The 2005 Enactment of RCW 780.120A.010.**

5 29. On May 6, 2005, the Legislature enacted ESHB 1397.

6 30. Section 2 of that Act created a new section in RCW, later codified at RCW 70.120A.010,
7 reading as follows:

8 Pursuant to the federal clean air act, the legislature adopts the California motor vehicle
9 emission standards in Title 13 of the California Code of Regulations, effective January
10 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules
11 to implement the emission standards of the state of California for passenger cars, light
duty trucks, and medium duty passenger vehicles, and shall amend the rules from time
to time, to maintain consistency with the California motor vehicle emission standards
and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act).

12 31. When, in April and May 2005, the Legislature adopted by reference a set of California
13 regulations "effective January 1, 2005," those regulations existed, were written down,
14 ascertainable, and already had the force of law in California.

15 **B. Ecology's 2005 WAC.**

16 32. Effective December 31, 2005, The Department of Ecology adopted WAC 173.423.030
17 which read as follows:

18 (1) This chapter incorporates by reference certain sections of the California Code of
19 Regulations, Title 13, relating to implementing the California motor vehicle emission
standards in the state of Washington. Table 070(1) found in WAC 173-423-070 lists the
20 sections of the California Code of Regulations, Title 13 incorporated by reference and
the California effective date for each section.

21 (2) Copies of the relevant sections of the California Code of Regulations, Title 13
22 incorporated by reference in this chapter are available on ecology's web site or by
contacting:

23 [Mail and telephone contact for Ecology followed.]

24 33. Ecology updated the list at WAC 173.423.070 effective February 15, 2009; again effective
25 December 29, 2012; again effective July 1, 2016; and again effective January 27, 2019.

26 **C. The Legislature's 2010 Amendment to RCW 70.120A.010.**

27 34. On March 17, 2010, the Legislature enacted SB 6365.

1 35. Section 3 of that Act created a new subsection of RCW 70.120A.010 reading as follows:

2 (3) The provisions of this chapter do not apply with respect to the use by a resident of
3 this state of a motor vehicle acquired and used while the resident is a member of the
armed services and is stationed outside this state pursuant to military orders.

4 36. The foregoing amendment did not affect any WAC or require any rulemaking by Ecology.

5 **D. The Legislature’s 2020 Recodification of RCW 70.120A.010 to RCW 70A.30.010**

6 37. On March 18, 2020, the Legislature enacted SHB 2246, which recodified RCW 70.120A.
7 010 to 70A.30.010.

8 38. SHB 2246 had an effective date of June 11, 2020.

9 **E. The Legislature’s 2020 Amendment to RCW 70.120A.010/ RCW 70A.30.010.**

10 39. On March 26, 2020, the Legislature enacted SB 5811, with an effective date of June 11,
11 2020.

12 40. In pertinent part, SB 5811 amended RCW 70.120A.010 (simultaneously with SHB 2246
13 recodifying that section to 70A.30.010).

14 41. In pertinent part, RCW 70.120A.010 was revised to read as follows:

15 (1) Pursuant to the federal clean air act, the legislature adopts the California motor
16 vehicle emission standards in Title 13 of the California Code of Regulations. The
department of ecology shall adopt rules to implement the motor vehicle emission
17 standards of the state of California, including the zero emission vehicle program, and
shall amend the rules from time to time, to maintain consistency with the California
18 motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal
clean air act).

19 **F. The California Air Resources Board Drafting And Adoption of ACC II.**

20 42. The California Air Resources Board (“CARB”) is the entity of California government
21 charged under California law with writing California motor vehicle emission standards in
22 Title 13 of the California Code of Regulations.

23 43. Since June 11, 2020, CARB has written and adopted extensive modifications to motor
24 vehicle emission standards in Title 13 of the California Code of Regulations.

25 44. Those modifications are known as “Advanced Clean Car II” or “ACC II” and have the
26 effect of banning the sales of internal combustion engine vehicles in California in 2030 and
27 beyond.

1 45. The ACC II regulations were drafted and adopted after the Washington Legislature passed
2 the Act.

3 46. Most or all of the ACC II regulations became operative in 2022.

4 47. Many of the ACC II regulations, and those that have the most direct effect of banning
5 internal combustion engine vehicles, became operative on November 30, 2022.

6 **G. Ecology’s Rulemaking.**

7 48. On September 7, 2022, the Department of Ecology published a proposed rule, available at
8 <https://lawfilesexternal.wa.gov/law/wsr/2022/18/22-18-103.htm>.

9 49. The proposed rule “will adopt California’s Advanced Clean Cars II (ACC II) rule, which
10 will ramp up sales of zero emission vehicles (ZEVs) in Washington state starting in model
11 year 2026.”

12 50. Ecology’s rulemaking proposed to adopt most of the provisions of a California rule banning
13 internal combustion engine vehicles which had not existed at the time the Act was passed
14 and was not operative even in California at the time the Rule was proposed.

15 51. However, Ecology did not adopt the entirety of CARB’s ACC II regulations.

16 52. Most notably, Ecology did not adopt certain portions of ACC II that would permit waiver
17 of compliance with ACC II if ACC II proved unworkable in practice.

18 **H. EPA Non-Approval of CARB’s ACC II Regulations.**

19 53. As of today, The U.S. Environmental Protection Agency has not authorized California to
20 adopt and act on ACC II.

21 54. EPA approval of ACC II is required before ACC II can be implemented as consistent with
22 the Federal Clean Air Act and the U.S. Constitution’s supremacy clause.

23 **VI. CAUSES OF ACTION.**

24 55. Each Cause of Action below relies on and incorporates the foregoing allegations.

25 **A. First Cause Of Action: Non-Delegation**

26 56. RCW 70A.30.010 (“the Act”) delegates to the Department of Ecology the authority to
27 adopt vehicle emissions standards.

1 57. The Act directs the Department of Ecology to amend its rules to maintain consistency with
2 the California vehicle emission standards and the federal Clean Air Act.

3 58. At the time the Act was adopted, there were no California regulations regarding zero
4 emission vehicles that had been approved by the Environmental Protection Agency.

5 59. The Act provides no standards by which the Department of Ecology can determine
6 whether the vehicle emission standards it adopts are consistent with the Legislature's
7 intent.

8 60. The Act contains no mechanism for challenging arbitrary actions by the Department of
9 Ecology or the abuse of the Department's discretionary power.

10 61. Without standards for determining vehicle emission standards and without mechanisms for
11 challenging the arbitrary exercise of the Department's authority, RCW 70A.30.010 is an
12 unconstitutional delegation of the legislative power.

13 **B. Second Cause of Action: The Act Violates The Separation of Powers.**

14 62. Adopting a zero emission standard for motor vehicles would require more than 90% of
15 motor vehicle owners either to replace their current motor vehicles with expensive electric
16 vehicles or to forego use of a motor vehicle.

17 63. Under our system of government, only the Legislature has the authority to prohibit the use
18 of more than 90% of the motor vehicles currently in use in Washington.

19 64. By instructing the Department of Ecology to adopt emissions standards including a zero
20 emission vehicle program, the Legislature has assigned to the Executive Branch a duty
21 belonging solely to the Legislature, thereby violating the constitutional requirement of
22 separation of powers.

23 **C. Third Cause of Action: 173-423-030 Did Not Adopt A Valid California Emissions
24 Standard**

25 65. RCW 70A.30.010 requires the Department of Ecology to adopt "rules to implement the
26 motor vehicle emission standards of the State of California, including the zero emission
27

1 vehicle program, and shall amend the rules from time to time, to maintain consistency with
2 the California motor vehicle emission standards.”

3 66. When WAC 173-423-030 was adopted, there was no motor vehicle emissions standard
4 adopted by the State of California relating to zero emission vehicles that had been approved
5 by the Environmental Protection Agency.

6 67. WAC 173-423-030 does not conform to the vehicle emissions standards adopted by the
7 Environmental Protection Agency.

8 **D. Fourth Cause Of Action: WAC 173-423-030 Does Not Comply With RCW 70A.30.010.**

9 68. The Act required Ecology to adopt the California Zero Emissions vehicle regulations,
10 without caveat or exception.

11 69. WAC 173-423-030 adopts many sections of California emissions regulations by reference,
12 but does not adopt the following: Section 1956.8 (a)(2)(F) and Section 1962.4
13 (e)(2)(A)3.a.i and ii.

14 70. Because it does not adopt two sections of the California regulations, WAC 173-423-030
15 does not adopt the vehicle emissions standards adopted by the State of California.

16 71. WAC 173-423-030 therefore does not comply with the Act and is invalid.

17 **E. Fifth Cause Of Action: WAC 173-423-030 Does Not Comply With Federal Law**

18 72. Under the Environmental Protection Act (42 U.S.C. § 7507), a state may adopt a standard
19 for motor vehicle emissions that either conforms to federal regulations for motor vehicle
20 emissions or else conform to the motor vehicle emissions standards that have been adopted
21 by California.

22 73. WAC 173-423-030 adopts many sections of California emissions regulations by reference,
23 but does not adopt the following: Section 1956.8 (a)(2)(F) and Section 1962.4
24 (e)(2)(A)3.a.i and ii.

25 74. Because it does not adopt two sections of the California regulations, WAC 173-423-030
26 does not conform to the vehicle emissions standards adopted by the State of California.

27 75. WAC 173-423-030 therefore does not comply with federal law and is invalid.

VII. PRAYER FOR RELIEF.

WHEREFORE, Plaintiff prays for the following relief:

- A. A declaration RCW 70A.30.010 is unconstitutional;
- B. A declaration that WAC 173-423-030 is void;
- C. An injunction against Defendants barring them each from enforcing the Act or the Rule;
- D. Plaintiff's costs, including reasonable attorney's fees; and
- E. Such other relief as the Court finds just and proper.

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1 March 8, 2023.

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