

STATE REPRESENTATIVE
19th LEGISLATIVE DISTRICT
JIM WALSH

State of
Washington
House of
Representatives



STATE GOVERNMENT
AND TRIBAL AFFAIRS
RANKING MINORITY MEMBER
TRANSPORTATION
ASSISTANT RANKING MINORITY MEMBER
CAPITAL BUDGET
RURAL DEVELOPMENT, AGRICULTURE,
AND NATURAL RESOURCES

May 11, 2020

The Honorable William Barr Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Attorney General Barr,

We are a group of state legislators in Washington, representing districts that have suffered a long train of abuses by statewide elected officials and unelected state bureaucrats who harass our people and eat out their substance.

Most recently, these abuses have revolved around our state's response to the coronavirus/COVID-19 outbreak. Some elected officials and many unelected bureaucrats are using the legitimate public health interest of responding to a viral outbreak to justify actions that the people of our districts believe violate their constitutional rights to privacy, to be secure in their homes and papers and against self-incrimination.

We need your help.

Chapters 42 and 43 of the Revised Code of Washington (RCW) give our Governor—and, by extension, state bureaucrats who work for the executive branch—the ability to declare a State of Emergency and then to assume certain extraordinary powers. In spirit, those sections of the RCW give the legislative branch some checks on the extraordinary executive powers. Sadly, the letter of the relevant law is poorly drafted and somewhat vague. So, in practice, our Governor has been operating unchecked during the declared a State of Emergency relating to COVID-19 outbreak.

Our Governor's unchecked actions have taken various forms, mostly as emergency "Proclamations" that have imposed hardships on the people of Washington. He has defined certain industry sectors and workers as "non-essential" and banned them from normal activity. He's prohibited certain merchants from opening their stores and shops. He's erratically restricted the people's access to certain public parks, lands and waters. He's cruelly limited Washingtonians' religious rights and is preventing them from expressing their beliefs in church and faith-based services. Each of these actions raises constitutional questions; and we have worked diligently to address those questions within the parameters of our state's legal and governmental systems.

But now, we face a situation that is more dire. It's the reason we—and the people we represent—ask for your help.

Recently, our Governor has issued an ill-defined “Four Phase Approach” for emerging from his various COVID Proclamations. As part of this “approach”, he is calling upon state agencies to implement section 246.100.040 of the Washington Administrative Code (WAC), as a means of controlling the spread of the coronavirus. In relevant part, that section reads:

At his or her sole discretion, a local health officer may issue an emergency detention order causing a person or group of persons to be immediately detained for purposes of isolation or quarantine in accordance with subsection (3) of this section, or may petition the superior court *ex parte* for an order to take the person or group of persons into involuntary detention for purposes of isolation or quarantine....

The Governor's reliance on WAC 246.100.040 for establishing what he calls “control” is the reason our constituents are concerned about losing the constitutional rights we described above—in addition to privacy, personal security and against self-incrimination. We ask you to be aware of these potential abuses. And to stand ready to intervene, if our Governor acts even more erratically or unlawfully in allowing those abuses actually to take place.

In spirit, the RCW sections that grant the Washington Governor extraordinary powers during a declared Emergency are meant to be limited in both time and circumstance. They're meant to last a few days or a week, until normal social order is restored. We're currently several months into the COVID-19 Emergency and appear to be months away from any meaningful end to it.

Our great concerns are: 1) that the COVID-19 outbreak has become—as many public health experts predicted—a lingering, chronic phenomenon; and 2) that our Governor's erratic use of the extraordinary powers granted by the people will also linger, causing damage to the people's constitutional rights and well-being far beyond the intended scope of our state law.

Thanks for your attention to this letter. Please, have your staff at the Department of Justice get involved to help the good people of Washington protect their foundational, constitutional rights. The rights that make this nation great. Please call upon any of us to discuss this matter further.

Sincerely,



Rep Jim Walsh LD19



Rep Jesse Young LD26

Keith W. Goehner

Rep Keith Goehner LD12

Bill Jenkin

Rep Bill Jenkin LD16

Vicki Kraft

Rep Vicki Kraft LD17

Bradley A. Klippert

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