

IN THE SUPERIOR COURT OF THURSTON COUNTY

IN AND FOR THE STATE OF WASHINGTON

CLINT DIDIER, LISA THOMAS,)	
TIM EYMAN, DEAN WELLSFRY.,)	CASE NO. 20-2-01662-34
and S ROWAN WILSON,)	
)	DECLARATION OF
Plaintiffs,)	MICHAEL COHEN
)	
v.)	
)	
JAY INSLEE, individually, and in his)	
capacity as Governor of the state of)	
Washington, and JOHN WIESMAN,)	
Individually, and in his capacity as)	
Secretary of Health for the state of)	
Washington,)	
)	
Defendants.)	

DECLARATION OF MAXFORD NELSEN

I, Maxford Nelsen, on oath and subject to the laws of perjury in the state of Washington, being over 18 years of age and competent to testify to the matters set forth herein, now declare as follows:

1. I am the labor policy director for the Freedom Foundation (“the Foundation”). This declaration references several reports published by the Foundation, and are submitted here pursuant to Fed.R.Evidence 803(18)(B).

2. On April 27, 2020, I emailed the Washington State Department of Health (DOH) a series of questions regarding its methodology for counting deaths from Coronavirus disease 2019 (COVID-19). A true and correct copy of my April 27, 2020 email to DOH is attached hereto as **Exhibit 1**.

3. On May 8, 2020, DOH replied to my questions via email. A true and correct copy of DOH’s May 8, 2020 email to me is attached hereto as **Exhibit 2**.

4. On May 18, 2020, the Foundation published a report entitled, “Washington state over-reporting COVID-19 deaths.” The report relied on DOH’s May 8 email and other documents publicly available on DOH’s website, concluding that, “DOH’s reported COVID-19 death total is inflated by as much as 13 percent due to state’s practice of counting every person who tests positive for COVID-19 and subsequently dies, even if the death was not caused by COVID-19.” A true and correct copy of the Foundation’s May 18 report is attached hereto as **Exhibit 3**.

5. The May 18 report explained that:

- a. When someone tests positive for COVID-19, the case is reported by public health staff to the Washington Disease Reporting System

(WDRS) operated by DOH.

b. WAC 246-490-200 requires that, “All deaths that occur in Washington state, excluding fetal deaths, must be reported electronically...” Pursuant to this regulation, deaths in Washington state are reported electronically to DOH via the Electronic Death Registration System (EDRS). This is the system used by funeral homes, coroners/medical examiners, hospitals and others responsible for completing death certificates.

c. While deaths are reported through the EDRS, the data are ultimately transferred into a DOH database, the Washington Health and Life Events System (WHALES).

d. Reporting a death to DOH through the EDRS involves completion of a “cause of death worksheet” and listing the “immediate cause” of death, the “underlying cause(s)” that initiated the events culminating with the immediate cause of death, and “[o]ther significant conditions contributing to death but not resulting in the underlying cause.” These fields are completed based on the “best medical opinion” of the certifier.

6. In its May 8 email, DOH explained that, to determine the number of COVID-19 deaths, it uses names and birthdates to match deaths reported through

the EDRS and registered in WHALES to positive COVID-19 cases reported to WDRS. DOH wrote, “Any individual who has a positive COVID-19 test and subsequently dies is counted on the [DOH] dashboards.”

7. At the time of its May 8 email, DOH dashboards reported 828 total COVID-19 deaths. Of these, DOH’s email indicated:

a. 681 (82 percent) “list some variation of ‘COVID-19’ in one of the causes of death” on the death certificate;

b. 41 (5 percent) of the death certificates do not list COVID-19 as a cause of death, but indicate it was a “significant condition contributing to death.”

c. 106 (13 percent) deaths involved persons who had previously tested positive for COVID-19 but did not have the virus listed anywhere on their death certificate as either causing or contributing to death.

8. On May 21, 2020, the Foundation released a second report entitled, “Washington health officials: Gunshot victims counted as COVID-19 deaths.” The report summarized a telephonic press briefing DOH conducted the same day to discuss its method for tabulating COVID-19 deaths. A true and correct copy of the Foundation’s May 21, 2020 report is attached hereto as **Exhibit 4**.

9. The report explained that, during the May 21 briefing, Katie Hutchinson, a DOH health statistics manager, stated:

a. “Our [DOH COVID-19] dashboard numbers do include any deaths to a person that has tested positive to COVID-19.”

b. “We don’t always know the cause of death for a death when it is first reported on our dashboard. That is true. Over the course of the outbreak, we have been monitoring and recording the causes of death as we know it. We currently do have some deaths that are being reported that are clearly from other causes. We have about five deaths — less than five deaths — that we know of that are related to obvious other causes. In this case, they are from gunshot wounds.”

c. “Over the course of the outbreak, we have been very aware of a small number of deaths being reported on our dashboard that end up not being due to COVID.”

d. “Our current dashboards reflect anybody that has died from COVID irrespective of cause of death. Those numbers will be adjusted.”

e. “Our process for identifying COVID-19 deaths basically speeds up our regular process but cuts out much of the data-quality processes.”

10. The Foundation’s May 18 report noted that, in its May 8 email to the Foundation, DOH stated, “All of the deaths currently attributed to COVID-19 had a positive PCR [polymerise chain reaction] test at some point. A PCR test is

required in order to classify something as a confirmed case. The Council of State and Territorial Epidemiologists (CSTE) recently wrote a position statement saying the probable cases should be reported as well. We hope to begin doing so this week.”

11. The Foundation’s May 21 report noted that, during the May 21 press briefing, Cathy Wasserman, a state epidemiologist for non-infectious conditions, was asked whether DOH had any plans to begin counting “probable” cases of COVID-19. Wasserman indicated the state was working on implementing the new guidance from the CSTE.

