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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ARTHUR WEST

Plaintiff,

Vs.

Cause No.

ALEX M. AZAR II, SECRETARY OF THE  
UNITED STATES' DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, UNITED  
STATES' DEPARTMENT OF HUMAN  
SERVICES, UNITED STATES CENTER FOR  
DISEASE CONTROL AND PREVENTION,  
Defendants.

PLAINTIFF'S ORIGINAL  
COMPLAINT FOR VIOLATION OF  
THE NATIONAL ENVIRONMENTAL  
POLICY ACT (NEPA)

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**I. INTRODUCTION**

**1.1** This is an action brought under the National Environmental Policy Act, (NEPA) and pendant State law claims for declaratory and injunctive relief in regard to a major federal action and an irrevocable commitment of over \$10,000,000.00 of federal resources taken by the federal government by and through the Department of Health and Human Services, (HHS) and Centers for Disease Control, (CDC) which was announced in July of 2020 by means of a July 13, 2020 "Guidance Document" concerning Covid-19 data reporting. (See Exhibit I, July 13 Guidelines)

**1.2** Plaintiff alleges that the defendants violated NEPA and took an arbitrary and capricious administrative action by radically restructuring the activities of the HHS and CDC in regard to the critical function of Coronavirus data collection and reporting by administrative fiat without proper administrative procedure or an EA, FONSI, EIS, or other appropriate NEPA documentation when it was manifestly apparent that such an unprecedented policy change presented extraordinary circumstances with foreseeable significant impact upon the human environment and human health, mandating some form of adequate review under NEPA. (See Exhibits II and III, July 17, 2020 correspondence from Senators and Representatives))



1           **3.1(c)** Plaintiff has a demonstrated judicially recognized connection to the human, urban  
2 and natural environment (See, e.g. *West v. Secretary of Transportation*, 206 F.3d 920, (9th Cir.  
3 2000) that will be specifically and materially impacted by the direct and proximate effects of the  
4 federal action in this case stemming from a common nucleus of operative facts. Plaintiff has  
5 standing to maintain this action.

6           **3.2** Defendant Alex M. Azar II is the Secretary of the Department of Human and Health  
7 Services, a federal agency subject to the requirements of NEPA.

8           **3.3** Defendant Department of Human and Health Services is a federal agency subject to  
9 the requirements of NEPA.

10           **3.4** Defendant Centers for Disease Control and Prevention (CDC) is a federal agency  
11 subject to the requirements of NEPA.

#### 12 **IV. ALLEGATIONS**

13           **4.1** Since March of this year the United States has been in the grip of an implacable  
14 adversary, Covid 19, a pandemic airborne virus that has killed over 135,000 Americans. Many  
15 have recognized that we are also in the grip of an “infodemic” where disinformation and a lack of  
16 reputable facts are crippling our ability to effectively respond to the crisis.

17           **4.2** Yet, as a number of our representatives have recognized, “The safety of our nation  
18 depends upon our ability to act quickly, accurately, and responsibly. Timely and accurate data  
19 enable States, epidemiologists, and scientists to track the course of the pandemic and make  
informed decisions . It is time we prioritize the health, safety, and life of all individuals by fully  
confronting the soaring number of cases we are facing right now.

**4.3** On July 13, 2020, defendants precipitously directed hospitals to cease reporting data  
to NHSN and instead report to HHS via the newly established TeleTracking or HHS Protect  
systems within 48 hours, splitting out hospital reporting and nursing home reporting into separate  
systems. Defendants’ Major Federal Action directed “[a]s of July 15, 2020, hospitals should no  
longer report the COVID-19 information in this document to the National Healthcare Safety  
Network site. Please select one of the above methods to use instead.” Defendants further  
unreasonably urged states to consider deploying the National Guard to the nation’s hospitals to  
support this data reporting change.

1           4.4 The change in reporting mechanism that defendants ordered will only exacerbate  
2 ongoing challenges to tracking COVID-19 data, which is already hampered by serious limitations  
3 in how data is collected, managed, reported, and disseminated. Combined with insufficient  
4 testing capacity, this has led to an incomplete picture of the scope and impact of the COVID-19  
5 pandemic in the United States. The CDC has indicated it believes the true number of cases in the  
6 country is 10 times higher than the official counts.

7           4.5 The CARES Act, signed into law by President Trump on March 27, 2020, included  
8 \$500 million for the CDC Data Modernization Initiative, to help CDC update, streamline, and  
9 scale up data collection. Rather than focusing on these critical efforts, however, the defendants  
10 have chosen to instead reorganize and redirect data flow. This decision to change the reporting  
11 process in the midst of a pandemic is deeply troubling. While there are certainly steps needed to  
12 improve public health data collection, waging interdepartmental jurisdictional battles to sideline  
13 our nation’s leading public health agency in the middle of an historic pandemic is bad  
14 management at best and malpractice at worst, and poses the threat of significant adverse impact  
15 to human health and the environment from concealment of critical Covid-19 related information  
16 and the potential misallocation of precious health care resources.

17           4.6 West is so situated as to be particularly impacted by these reasonably foreseeable  
18 potential adverse impacts stemming from defendants’ actions in that he may have a greater risk  
19 of contracting the disease if the data of transmission is concealed, and he may be denied care due  
20 to lack of allocated resources if he does become infected.

21           4.7 The instructions to hospitals in the department guidance are explicit and underscored:  
22 “As of July 15, 2020, hospitals should no longer report the Covid-19 information in this  
23 document to the National Healthcare Safety Network site,” the C.D.C.’s system for gathering  
24 data from more than 25,000 medical centers around the country.

25           4.8 Plaintiff alleges that the radical restructuring of how this critical data is managed and  
26 the transfer of the data management from the CDC to a private contractor unilaterally appointed  
27 by the HHS constituted agency action as defined in CEQ 1508.18 (b)(1) a-c, and in particular  
28 “formal documents establishing an agency's policies which will result in or substantially alter  
29 agency programs” which, due to the clear and undeniable extraordinary circumstances set forth  
30 above, constitute a Major Federal Action and a major reallocation of Federal Resources with  
31 foreseeable significant adverse impacts to human health and the environment including but not

1 limited to those identified in Exhibits II and III, July 17 correspondence from the Senate and  
2 House of Representatives, appended hereto and by reference incorporated herein.

3 **4.9** Plaintiff asserts that the defendants failed not only to consider the reasonably  
4 foreseeable impacts to human health and their allocation of resources under NEPA, they failed to  
5 adequately consider the extraordinary circumstances surrounding their radical realignment of  
6 resources and their potential for significant adverse impact upon human health and the  
7 environment as required by NEPA and the HHS' own NEPA Regulations.

8 **4.10** Defendant HHS' General Administration Manual, at Part 30 Environmental  
9 Protection, provides at section 30-50-00: The National Environmental Policy Act of 1969  
10 (NEPA), 42 U.S.C. 4321-4370d, establishes policy and requirements governing all Federal  
11 Departments and agencies with respect to protecting the environment... NEPA requires all  
12 Federal Departments and agencies to assess, as an integral part of their decision making process,  
13 the potential environmental impacts of their actions prior to initiation of those actions. NEPA  
14 establishes environmental policy, sets goals (Section 101), and provides procedures (Section 102)  
15 for carrying out the policy.

16 **4.11** Specifically, Section 102(2)(C) of NEPA requires all agencies of the Federal  
17 Government to include an environmental statement "in every recommendation or report on  
18 proposals for legislation and other major Federal actions significantly affecting the quality of the  
19 human environment..."

**4.12** The purpose of this and other requirements is to ensure that environmental  
information is available to public officials and citizens before Federal agencies make decisions to  
take actions which could significantly affect the quality of the human environment.

**4.13** Defendant HHS' General Administration Manual, at Part 30 Environmental  
Protection, provides at section 30-50-10: This chapter applies to all organizational elements of  
HHS. This chapter applies to any HHS action affecting the quality of the environment of the  
United States, its territories, or possessions.

**4.14** Defendant HHS' General Administration Manual, at Part 30 Environmental  
Protection, provides at section 30-50-15: All HHS policies and programs will be planned,  
developed, and implemented so as to achieve the policies declared by NEPA and required by the  
CEQ regulations to ensure responsible stewardship of the environment for present and future  
generations.

1           **4.15** Defendant HHS' General Administration Manual, at Part 30 Environmental  
2 Protection, provides at section 30-50-25: Categorical Exclusions. Actions within a class that  
3 individually or cumulatively have been determined under Section 30-20-40 not to significantly  
4 affect the quality of the human environment ordinarily are excluded from the preparation of an  
5 EA or EIS. To find that a proposed action is categorically excluded, OPDIVs/STAFFDIVs shall  
6 determine if: 1. The proposal fits within a class of actions described in 30-20-40 or a categorical  
7 exclusion developed by the OPDIV/STAFFDIV in accordance with 30-20-30; and  
8 extraordinary circumstances are related to the proposed action that may affect the significance of  
9 the environmental effects of the proposal.

10           **4.16** Absence of Extraordinary Circumstances. Requires that... There are no extraordinary  
11 circumstances related to the proposal that may affect the significance of the environmental effects  
12 of the proposal. Extraordinary circumstances are unique situations presented by specific  
13 proposals, such as scientific controversy about the environmental effects of the proposal;  
14 uncertain effects or effects involving unique or unknown risks; or unresolved conflicts  
15 concerning alternate uses of available resources within the meaning of section 102(2)(E) of  
16 NEPA; and where it is reasonable to anticipate a cumulatively significant impact on the  
17 environment. See 40 CFR 1508.27 for examples.

18           **4.17** Defendants violated NEPA and their own regulations in failing to assess or review  
19 the extraordinary circumstances related to their Covid 19 reporting and allocation actions which  
20 made a Categorical Exclusion inappropriate and some form of NEPA analysis mandatory.

21           **4.18** Plaintiff seeks an order requiring appropriate NEPA documentation for the national  
22 policy determination(s) made by the executive branch of the federal government to the radical  
23 restructure of how this critical Covid-19 data is managed, in the form of a DCE, EA, EIS or  
24 FONSI, and the appropriate environmental, social, economic, and cumulative impact studies, in  
25 addition to a full consideration of alternatives, including no action alternative. The cumulative  
26 impacts of the proposed action should also be a component of the NEPA analysis.

27           **4.19** Further, due to the defendants' manifest violation of NEPA, an injunction and a  
28 declaratory ruling is sought. This case presents an Article III case or controversy, and plaintiff is  
29 entitled to the relief sought.

30           **4.20** This case involves a failure to consider reasonably foreseeable potentially significant  
adverse impacts upon human health in the natural and urban environment Plaintiff has

1 particularized standing due to his pre-existing medical conditions, his residence in a  
2 Democratically governed State subject to partisan withholding of federal health care resources,  
3 and potential deployment of the National Guard in regard to the defendants' actions. Plaintiff  
4 also has informational standing.

5 **4.21** Plaintiff travels within the State of Washington for professional, leisure, recreation,  
6 educational and entertainment purposes. He has a recognized federal bird watching interest, and a  
7 connection to the animals and plants in the environment. Accurate information from the CDC in  
8 regard to the prevalence of the Coronavirus is essential for him to preserve his health and enjoy  
9 these activities and amenities.

10 **4.22** As the appended Exhibits II and III demonstrate, plaintiff's safety as well as  
11 plaintiff's health may well be potentially impacted by the defendants' failure to require a proper  
12 consideration of environmental, social, and economic factors before a potentially dangerous and  
13 radically altered federal scheme of Covid-19 data collection and reporting is implemented.

## 9 **V. CAUSES OF ACTION.**

### 10 **V.1. NEPA-APA CLAIM**

11 **5.1** By taking a Major Federal Action as defined in 40 CFR 1508, and in the absence of  
12 compliance with NEPA in the form of a NEPA EIS, EA, FONSI, or CE, and by failing to follow  
13 their own NEPA regulations or consult with other interested federal entities, the defendants  
14 violated the National Environmental Policy Act for which relief is appropriate by means of an  
15 injunction and review under the Administrative Procedures Act.

### 16 **V.2. UNIFORM DECLARATORY JUDGMENTS ACT CLAIM**

17 **5.2** By acting by administrative fiat in the absence of compliance with recognized  
18 administrative procedure and in the absence of compliance with NEPA in the form of a NEPA or  
19 Joint NEPA-SEPA EIS, EA, or FONSI, and in improperly delegating or accepting regulatory  
20 authority under the controlled substances act, the defendants acted unlawfully and violated the  
21 National Environmental Policy Act in an unlawful and unconstitutional manner, creating a case  
22 and controversy for which relief is appropriate under the Federal Declaratory Judgments Act.

### 23 **V.3. PENDANT STATE LAW CLAIM**

24 **5.3** By acting by administrative fiat in the absence of compliance with recognized  
25 administrative procedure or NEPA, and in improperly delegating or accepting reporting and data

1 collecting authority where none was intended by Congress, the defendants acted arbitrarily and  
2 capriciously, in violation of fundamental constitutional rights, for which relief is appropriate.  
3 See, *The Scope of Judicial Review of Agency Actions in Washington Revisited—Doctrine,*  
4 *Analysis, and Proposed Revisions*, Tim J. Filer, Washington Law Review Volume 60 Number 3,  
5 citing *Williams v. Seattle School Dist. No. 1*, 97 Wn. 2D 215, 221-22, 643 P.2d 426, 430-31,  
6 (1982), *Pierce County v. Civil Serv. Commission*, 98 Wn. 2d 690, 693-94, 658 P.2d 648, 650-51.

## 5 VI. REQUEST FOR RELIEF

6 Plaintiff reasserts the matters set forth above, and respectfully requests the following  
7 relief:

8 **6.1** That the Federal defendants be compelled to comply with the requirements of NEPA  
9 and their own regulations in regard to their allocation of resources and potential alteration of  
10 Covid-19 reporting, in an appropriate NEPA document, that mitigation measures be considered  
11 to reduce resulting impacts upon human health and the environment,

12 **6.2** That a Declaratory Judgment issue declaring that the defendants' actions and any  
13 connected actions resulting from the federal determination(s) announced in the HHS' coercive  
14 July 13 "Guidelines" were arbitrary and capricious and unlawful.

15 **6.3** That a Declaratory Judgment issue declaring the July 13 Guidelines and any  
16 authorizations or acts in furtherance of said guidelines void, as having been taken as a result of  
17 arbitrary and capricious action in violation of NEPA.

18 **6.4** That the Court order that such relief issue as may be necessary by injunction or  
19 otherwise, to protect the status quo ante and preserve reporting to the CDC pending the ultimate  
20 determination of this case.

21 **6.5** That plaintiff recover his costs and fees.

22 I, Arthur West, certify the foregoing to be correct and true under penalty of perjury of the  
23 laws of the United States and the State of Washington.

24 Dated this 21st day of July, 2018, in Olympia, Washington.

25 S/Arthur West

26 Arthur West