

1 policy choice here which is contrary to the statutory text,  
2 contrary to the administrative record and without any  
3 justification in the administrative record. We ask that  
4 this court declare that the final rule is invalid and issue  
5 a permanent injunction. Thank you.

6 THE COURT: Thank you. So I have listened  
7 carefully, and I had the opportunity to review all of the  
8 written submissions in this matter as well. I had access  
9 to the 8,349-page record in searchable PDF format. Thank  
10 you for that. It is so much more efficient to review the  
11 cited portions with searchable records, and in addition,  
12 this format makes it easier for the court to search for  
13 specific things in the record by using search terms. I  
14 want to thank you, the parties, and the *amicus* for the  
15 briefing. Your perspectives and arguments are clear and  
16 concise, and as you know, trial judges are generalists  
17 moving from one topic to another, from civil to criminal,  
18 multiple times a day sometimes, and so to have your written  
19 materials and to hear your oral argument is helpful to  
20 bring these specific issues to the forefront of my mind.

21 The legislature has delegated the enforcement of the  
22 Washington State insurance code to the insurance  
23 commissioner. The Office of the Insurance Commissioner has  
24 been vested with authority that is either expressly  
25 conferred by or reasonably implied in the statutes. The

1 question then in this case is whether the commissioner's  
2 broad rulemaking authority includes the ability to adopt  
3 the temporary credit-scoring rule. This rule bans the use  
4 of credit-scoring in setting insurance rates. What is the  
5 effect of the explicit legislative authorization of  
6 credit-scoring in both RCW 48.18.545(4) and RCW  
7 48.19.035(2) (a) when analyzed in conjunction with the RCW  
8 48.19.020 "Premium rates for insurance shall not be  
9 excessive, inadequate or unfairly discriminatory" is where  
10 I believe my decision lies.

11 With that backdrop I'll turn to the question of whether  
12 the petitioners have demonstrated that the commissioner has  
13 violated the Administrative Procedure Act. RCW 34.05.570  
14 subsection (2) (c) addresses four circumstances when the  
15 court can provide declaratory relief. I'll first address  
16 whether the rule was adopted without compliance with the  
17 statutory rulemaking procedures.

18 Review of the materials demonstrates that the process  
19 required in the Administrative Procedure Act was followed.  
20 The record reveals that notice of intent to conduct  
21 rulemaking was provided. Notice of the proposed language  
22 was included. The public was given the opportunity to  
23 comment on the proposed rule. A cost/benefit analysis of  
24 rule 2021-07 was completed in October of 2021. In the  
25 administrative record at pages 2278 to 2285, that

1 cost/benefit analysis is present. And I will grant that  
2 the scope is not what the petitioners believe it should  
3 have been, but the scope is not defined in the statute and  
4 the cost/benefit analysis was completed. A concise  
5 explanatory statement summarizing the agency's response to  
6 the comments received was provided and there was a public  
7 hearing on the rule.

8 Next I will address whether the rule is arbitrary and  
9 capricious. Parties agree that on February 1st, 2022, the  
10 commissioner adopted a rule temporarily prohibiting the use  
11 of credit histories in setting insurance rates for auto,  
12 homeowners and renters insurance. The record reflects and  
13 the court does not question whether that rule protects  
14 Washington residents who are entitled to be free of  
15 improper discrimination in how their insurance rates are  
16 set. It is well established that there is an undeniable  
17 link between race and poverty, and any policy that  
18 discriminates based on credit worthiness correspondingly  
19 results in a disparate impact on communities of color. The  
20 temporary rule does in fact protect from such  
21 discrimination. The record is also clear that the  
22 commissioner has requested legislation to limit or wholly  
23 eliminate credit-scoring in insurance at least three times  
24 over the past 20 years, first in 2002, again in 2010 and  
25 for a third time during the pandemic in 2021. Each of

1 these efforts has been rejected by the legislature.

2 Finally, the record is clear and the court does not  
3 question whether eliminating the use of credit scores will  
4 disproportionately impact seniors who are on a fixed  
5 income. The record is replete with thousands of examples  
6 of individuals whose insurance rates increased  
7 substantially as a result of the implementation of the  
8 emergency rule which has since been invalidated.

9 So when I look at all of those issues and the  
10 commissioner's understanding of his authority I'm not  
11 finding that the rule is arbitrary and capricious. In  
12 other words, I'm not finding that the conduct of the  
13 insurance commissioner was willful and unreasonable without  
14 consideration or regard for the facts and circumstances.

15 It is well established that in a petition for judicial  
16 review of an agency rule the court presumes that  
17 administrative rules adopted pursuant to a legislative  
18 grant of authority are valid and will uphold such rules if  
19 they are reasonably consistent with the controlling  
20 statute. That brings us back to the language in statutes  
21 and whether there can be a violation of the Administrative  
22 Procedure Act if that rule exceeds the statutory authority  
23 of the agency.

24 Here the Office of the Insurance Commissioner read RCW  
25 48.19.020 which specifically states "Premium rates for

1 insurance shall not be excessive, inadequate or unfairly  
2 discriminatory" as permitting them to overcome the explicit  
3 legislative authorization of credit-scoring in insurance  
4 scoring both in RCW 48.18545 subsection (4) and RCW  
5 48.19.035 subsection (2) (a). The language is not a  
6 guarantee; however, RCW 48.19.020 cannot be read in such a  
7 way as to eliminate all meaning of both RCW 48.18.545  
8 subsection (4) and RCW 48.19.035(2) (a). To say that the  
9 language allowing the Office of the Insurance Commissioner  
10 to ensure that premium rates for insurance shall not be  
11 excessive, inadequate or unfairly discriminatory permits  
12 the Office of the Insurance Commissioner to ignore the  
13 sections which permit the use of credit scores in setting  
14 insurance rates is error. As Senator Mark Mullet, chair of  
15 the senate business financial services and trade committee,  
16 said in his declaration, policy choices such as considering  
17 whether social concerns justify banning an actuarial sound  
18 insurance practice are uniquely the province of  
19 democratically elected legislatures. Therefore, here RCW  
20 34.05.570 subsection (2) (c) has been violated. The  
21 insurance commissioner exceeded his statutory authority in  
22 reading those three statutes in a way that eliminated the  
23 meaning of two of them.

24 The final question that this court addresses is whether  
25 this error rises to the level of a constitutional violation

1 or was it simply a misinterpretation of the statute. On  
2 this record I find the latter. This is a rule which  
3 exceeds the statutory authority through the  
4 misinterpretation of these three provisions. I am not  
5 finding that it is to such a degree that it purposefully  
6 failed to recognize the separation of powers between the  
7 executive branch and the legislative branch.

8 Ultimately the request for declaratory judgment is  
9 granted. I believe that I have been clear as to the  
10 grounds for my ruling. I did not see any proposed orders,  
11 but I will ask the petitioners as the prevailing party if  
12 they have questions about how to get an order to me, and  
13 I'll wait to see who unmutes to see who is going to answer  
14 that question.

15 MS. WELLS: Your Honor, this is this is Vanessa  
16 Wells speaking for the petitioners. I suspect that our  
17 Washington counsel understand how to get the order to you.  
18 Our proposal would be that we create the order and  
19 judgment, we provide it to the commissioner's counsel for  
20 approval as to form and then provide to Your Honor -- I  
21 seem to recall there's sort of two ways to get it to you  
22 which --

23 THE COURT: There are indeed two ways. Each has its  
24 benefits and detriments. One is through the clerk's  
25 office, and for a fee they will bring it to me. The other

1 is simply filing it and then having someone call between  
2 8:30 and nine. Did you have any questions about my ruling?

3 MS. WELLS: I believe we are clear on the ruling,  
4 and we will be working with the commissioner's counsel to  
5 make sure that we execute it correctly. We also will have  
6 the benefit of a transcript.

7 THE COURT: Ms. Deleon, did you have any questions  
8 for me?

9 MS. DELEON: No, Your Honor. Thank you.

10 MR. VOCKE: Your Honor, this is Damon Vocke for  
11 APCIA, et al. Thank you very much for your time. We will  
12 work on the order. There is a continuance stay in effect  
13 through final adjudication so we will confer with  
14 Ms. Deleon in that regard, but we appreciate your careful  
15 time and attention on a very complex case. Thank you very  
16 much.

17 THE COURT: Thank you. And again thank you all for  
18 your materials.

19 MS. WELLS: Thank you, Your Honor.

20 THE COURT: We will be at recess.

21 (A recess was taken.)  
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