

**IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR KING COUNTY**

ARTHUR WEST,

plaintiff,

Vs.

**NIRAV TOLIA, nextdoor CEO,
and NEXTDOOR, a Corporation
doing business in the State of
Washington, CITY OF SEATTLE,
JOHN AND JANE DOES NO. 1-5,
defendants.**

No.

**PLAINTIFF'S
COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF**

I INTRODUCTION

1.1. This is an action asserting exclusively state law claims for declaratory and injunctive relief concerning the actions of defendants in creating and facilitating a monopolized for-profit public forum where racial profiling, invidious discrimination, vigilantism and local political discussions take place and whereby local government and law enforcement agencies communicate with and deliver public services to their citizens.

1.2. The U.S. Supreme Court recently recognized, in *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017), that social media has become “*the modern public square*”¹—a powerful tool for ordinary people to exercise their...rights to

¹ In a concurring opinion, Justice Allito noted the broad swath of new legal ground the court was harrowing, observing “The Court is unable to resist musings that seem to equate the entirety of the internet with public streets

1 freedom of speech, by petitioning their elected representatives and making their
2 voices heard on a wide scale. While under the *Pruneyard* Doctrine, federal law
3 does not support an expression or petition right on ostensibly “private” fora, the
4 heightened protections of State law such as the Constitution of the State of
Washington, may do so, especially in the case of state action or public function
analysis².

5 **1.3.** Plaintiff maintains that defendants, by deliberately developing and
6 acting to develop the *Nextdoor* business model to incorporate as a central function
7 a monopolized discussion of public and local political issues and by actively
8 soliciting public agencies and law enforcement entities to employ *Nextdoor* to
9 communicate with and deliver police and other municipal services to the public;
10 have transformed an ostensibly “private” service into the type of public forum
11 recognized in *Packingham*, and have attempted to monopolize local politics and
exert special privileges and immunities, thus bringing their actions within the
ambit of the “public function” doctrine expressed by the Supreme Court in *Marsh*³

12 **1.4.** As one Seattle reporter previously **blacklisted** by Nextdoor⁴ has aptly
13 noted: “Nextdoor wants to have it both ways: To be a “partner” with cities and
14 conduit for city officials to share information with and solicit feedback from
15 residents, and to be a private social media app where neighborhood residents can
say things to each other that they wouldn’t want to say in a public forum. I
maintain it can’t be both, and that it shouldn’t be either.”

16 _____
and parks.”

17 ² See *Southcenter Joint Venture v. NDPC*, 113 Wn.2d 413, 780 P.2d 1282, (1989), Citing to *Marsh v. Alabama*, 326
U.S. 501, 90 L. Ed. 265, 66 S. Ct. 276 (1946); 2 R. Rotunda, J. Nowak & J. Young, *CONSTITUTIONAL LAW*
16.2, at 163 (1986)

18 ³ See *Marsh*: Whether a corporation or a municipality owns or possesses the town the public in either case has an
identical interest in the functioning of the community in such manner that the channels of communication remain
free... The managers appointed by the corporation cannot curtail the liberty of press and religion of these people
consistently with the purposes of the Constitutional guarantees

19 ⁴Erica Barnett, cited by Holly Quinn, in *Nextdoor’s role in murder-suicide news coverage raises questions* online
at <https://technical.ly/delaware/2018/05/01/nextdoors-role-in-murder-suicide-news-coverage-raises-questions/>

1 **1.5.** By their acts and omissions in deliberately creating a electronic for-
2 profit version of a traditional public forum and partnering with public agencies to
3 provide law enforcement and general police power services via *Nextdoor*,
4 defendants have equitably waived any objection to the application of the
5 heightened protections of the Washington State Constitution to their activities.

6 **1.6.** The plaintiff alleges that defendants Tolia and Nextdoor, in partnering
7 with local government and law enforcement agencies, and in developing a for-
8 profit electronic version of a traditional public forum performing public functions
9 in a manner subject to the public function doctrine, have engaged in “state action”
10 without constitutional safeguards, were negligent, and have violated the
11 Constitution and Laws of the State of Washington, including the provisions of
12 RCW 19.86, and that plaintiff is entitled to the relief sought.

13 **1.7.** The plaintiff alleges that Nextdoor's public agency partners, by entering
14 into partnership agreements with defendants Tolia and Nextdoor to deliver
15 municipal services, and defendant City of Seattle, by conducting a “Town Hall”
16 via the Nextdoor platform, evinced the “governmental intent⁵” of creating a
17 designated public forum on Nextdoor.

18 **II PARTIES AND JURISDICTION**

19 **2.1.** Plaintiff West is a consumer of municipal services in Olympia and
Seattle, and a former member of Nextdoor that, on September 20, 2018, was
Blacklisted, with standing to seek relief.

2.2. Defendant Nirav Tolia is the CEO of Nextdoor, directly responsible for
the acts and omissions of a *Nextdoor*, Billion-Dollar Mega-Corporation required to
abide by the Constitution and Laws of the State of Washington in it's activities in
Washington State.

⁵ See: Gen. Media Commc'ns, Inc. v. Cohen, 131 F.3d 273, 279 (2d Cir. 1997)

1 **2.3** Defendant Nextdoor is a Billion-Dollar, for profit, Mega-Corporation
2 doing business in King and Thurston counties as a social network that fosters racial
3 profiling, racial, economic, and class-based invidious discrimination, and which
4 attempts to monopolize local politics and law enforcement activity by forming
5 formal partnerships for the provision of municipal services with local public and
6 law enforcement agencies, (including the City of Seattle and the Seattle Police
Department), that is required to abide by the Constitution and Laws of the State of
Washington.

7 **2.4.** The City of Seattle is a municipal entity located in King County that has
8 a formal partnership agreement with defendant Nextdoor. As such, it is a necessary
party for a just adjudication of this case.

9 **2.5.** The King County Superior Court has jurisdiction over the parties and
subject matter of this claim.

10 **III ALLEGATIONS**

11 **3.1.** Plaintiff West is a homeowner in the City of Olympia. For over a year
12 he was a member of Nextdoor Northeast, posting and receiving information on
13 local law enforcement and political affairs, discussing local politics, and posting on
14 diverse subjects, including such varied topics as lost pets, pending municipal up-
zoning, homelessness, local crime and law enforcement, the theories of authors
15 such as Allison Quart, Robert Ardrey, Sigmund Freud and Karl Marx, and the
16 comic operettas of Gilbert and Sullivan and Wolfgang Amadeus Mozart.

17 **3.2.** On or about September 20th, 2018, a scathing editorial critical of the
18 Seattle City Council's apparent violations of the OPMA was published in the
19 Seattle Times. On this same day, Plaintiff was attacked on Nextdoor for “suing
local government”, criticism presumably relating to his OPMA litigation with the
City of Seattle. Later that day plaintiff's account was terminated by an agent of the

1 defendants, apparently on a non-content neutral basis, without notice or any form
2 of pre- or post-deprivation due process, or opportunity to respond. This was not the
3 first time that an open government activist had been blacklisted from Nextdoor in
4 relation to their actions in criticizing the secretive practices of the City of Seattle,
5 which has a “partner” agency relationship with Nextdoor.

6 **3.3.** *Nextdoor* is a national mega-corporation that, via “partnership”
7 agreements with over 3,000 public and law enforcement agencies nationwide,
8 provides a vehicle for the delivery of municipal and law enforcement services, and
9 an online public forum for local policy, political and law enforcement related
10 discussions⁶. There are over 150,000 neighborhoods enrolled in Nextdoor, or about
11 75 percent of all of the neighborhoods in the U.S. Nextdoor is publicly valued at
12 over a Billion Dollars⁷. Significantly, the poor and those with alternative lifestyles
13 are somewhat underrepresented on *Nextdoor*.

14 **3.4.** As shown by defendant's website at <https://nextdoor.com/city/apply/>
15 *Nextdoor* is a political and social media juggernaut that “partners” with local
16 government for public political purposes, such that: “*Public agencies across the*
17 *country are using Nextdoor to improve their communities.*” *Nextdoor* actively
18 solicits “partnership agreements” with local government agencies throughout the
19 nation and cities like Seattle and Olympia in Washington State.

20 **3.5.** As the *Nextdoor* Website itself states⁸

21 Most public safety agencies use Nextdoor for community
22 policing/engagement, crime prevention, and emergency pre-
23 paredness. With Nextdoor, you can request help from or provide
24 information to actual residents who live within your service area,
25 and want to connect with public safety agencies to make their
26 communities safer and stronger.

27 ⁶ <https://www.politico.com/states/california/story/2017/04/the-anti-facebook-nextdoor-aims-for-neighbor-to-neighbor-approach-in-politics-111133>

28 ⁷ <https://almanacnews.com/news/2017/06/16/menlo-park-lorelei-manor-hailed-as-nextdoors-first-neighborhood>

29 ⁸ <https://v.fastcdn.co/u/e0116006/27142302-0-CaseStudiesPublicAge.pdf>

1 **3.6.** Both the Police and Fire Departments of the City of Olympia are
2 members of *Nextdoor* and use it to communicate with the public and to coordinate
3 and deliver services. A member of the Olympia Planning Commission used
4 *Nextdoor* to tout a pro-development up-zoning proposal called the Missing Middle.

5 **3.7.** Similarly, the Seattle Chief of Police⁹ recently, upon very short notice,
6 conducted a *Nextdoor* “Town Hall” conference on law enforcement issues¹⁰.
7 Outrageously, a reporter was blacklisted from the site for reporting on the “public”
8 nextdoor-Seattle PD “Town Hall”.

9 **3.8.** In the Olympia, Missing Middle supporters shamelessly exploited the
10 *Nextdoor* forum to promote their pro-development agenda and to attack, defame,
11 and vilify those who disagreed with them, including plaintiff West.

12 **3.9.** *Nextdoor* is primarily financed by advertisements from the developer
13 and business community and apparently employs the political weight of its
14 communications network to promote a partisan pro-development agenda.

15 **3.10.** As a result of defendants' willful and deliberate actions West has been
16 unable to use this forum to contact his police or fire departments or receive their
17 communications. He has been unable to learn of crimes in his immediate
18 neighborhood, police and law enforcement updates, political and campaign events,
19 and meetings of social and political groups such as the North East Neighborhood
20 Association.

21 **3.11.** Further, his ability to participate in the public marketplace of ideas, his
22 right to receive information, and his rights to petition for redress of grievances
23 have been abridged, all at the unfettered whim of some local electronic tyrant
24 whose disrespect for and lack of knowledge of Article I of the Constitution of the

25 ⁹<https://www.theatlantic.com/technology/archive/2016/05/nextdoor-social-network-police-seattle/481164/>

26 ¹⁰<https://www.seattletimes.com/seattle.../nextdoor-flap-has-seattle-scrutinizing-how-it-handles-social-media/>

1 State of Washington would, by comparison, make Ioseb Besarionis dze Jugashvili
or Ghengis Khan appear as promiscuous libertines.

2 **3.12.** Perhaps the secret police, totalitarian and free speech related
3 implications of *Nextdoor* are best illustrated by defendant's blacklisting of reporter
4 Erica Barnet¹¹ for her reporting on the *Nextdoor* "Town Hall" and questioning the
City's 'partnering" relationship with defendants Tolia and *Nextdoor*.

5 **3.13.** Due to defendants' negligence and willful and wanton conduct, a
6 number of other serious problems have developed via *Nextdoor*, including racial
7 profiling, invidious discrimination based upon race, class, and creed, vigilante
8 justice, and the "tyrant of the minority" of sanctimonious and condescending,
9 uptight local *Nextdoor* "leads" who believe they, as the thaumaturgically self-
10 anointed divine prophets of the supreme doctrines of the divine defendant Tolia,
11 are among "the elect" who can do no wrong, and who like modern day knight-
12 errants reminiscent of El Ingenioso Hidalgo Don Quijote de la Mancha roam the
social media sites of the internet pursuing their own relative ideals of truth and
beauty, tilting at windmills and rescuing damsels in distress from the dragons that
they alone believe to exist.

13 **3.14** In this context of this history of capricious exclusion of the poor and
14 politically incorrect, racial and class based profiling, invidious discrimination,
15 secret police and vigilante activity, and official repression of a journalist by a
16 billion dollar corporate juggernaut, the true nature of nextdoor becomes apparent, it
17 is in effect a modern day electronic version of Jim Crow, the Poll Tax, and the
private fire brigades of ancient Rome¹², with a sprinkle of Cato the Elder and the
Geheime Staatspolizei¹³ all rolled into one Billion-dollar behemoth of a public

18 ¹¹<https://www.geekwire.com/2016/nextdoor-reporter-seattle-forum/>

¹²See Plutarch, *Life of Crassus*, 75 A.C.E. Translated by John Dryden.

19 ¹³ See: Devin Green, *Why Joining Nextdoor Made Me Afraid Of My Spying Neighbors*; "The problem I have with Nextdoor is the same problem I have with NSA surveillance, or any other unwarranted infringement of privacy. The power is always one-sided. People on Nextdoor only reveal their paranoia to an exclusive social network (until some

1 social network juggernaut lounging upon the electronic public square of our
2 friendly neighborhood 21st century social media-secret police, munici-corporate,
3 for-profit, public forum site like a hirsute 350 pound Go-rilla.

4 **3.15.** As entities conducting business in Washington, to a degree sufficient
5 to meet the standards set in *International Shoe*, defendants are bound by, and
6 subject to the laws and constitution of Washington as a forum State.

7 **3.16.** In Washington, entities involved in providing municipal services and
8 conducting public functions¹⁴ through public fora are subject to the reach of the
9 anti-monopoly provisions of statute and privileges and immunities clause¹⁵, and
10 penumbral Article I, section 4 and 5 rights flowing exclusively from the
11 Constitution of the State of Washington.

12 **3.17.** The *Nextdoor* defendants, by partnering with local government and
13 law enforcement agencies, have become inter-twined “state actors”. By
14 deliberately seeking to create, monopolize, and profit from an electronic version of
15 a traditional public forum in contravention of the Constitution and Laws of the
16 State of Washington, the *Nextdoor* defendants negligently violated regular and
17 elevated standards of care, and committed unfair and deceptive business practices,
18 damaging plaintiff, and violated exclusively state law rights protected under the
19 Washington State Constitution and RCW 19.86.

3.18. By their actions the defendants exercised a governmental monopoly,
and franchises, privileges and immunities in violation of the exclusive and

17 writer publishes an article about them). For the person having their worst day ever, the person who yells at a child,
18 or asks for money, or pilfers a trashcan, the balance is not in their favor. You could have your picture posted online,
19 your child reported to protective services, and your freedom taken away by police officers. Aided and abetted by an
army of informants.” <https://www.snapmunk.com/nextdoor-spying-neighbors/>

¹⁴ See *Marsh*: Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as
freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since
their operation is essentially a public function, it is subject to state regulation.

¹⁵ Article I, section 12.

1 heightened protections of the laws and Constitution of the State of Washington,
damaging plaintiff.

2 **3.19.** By their acts and omissions the *Nextdoor* defendants attempted to
3 impermissibly monopolize and profit from municipal politics and law enforcement
4 services, and have unconsciously exercised and sought to create for Nextdoor and
5 Nextdoor users special franchises, privileges and immunities incompatible with the
6 laws and Constitution of the State of Washington. These actions injured West in
regard to the safety of his person, chattels, and property, and in regard to his
participation in local politics, including homelessness and local land use issues.

7 **3.20.** The exact boundaries and elements of our public forum jurisprudence
8 are less than perfectly clear¹⁶, particularly in a rapidly evolving legal, social and
9 electronic landscape¹⁷. However, the question of what is the appropriate type of
10 round legal pigeonhole to stuff the square peg of the *Nextdoor* “forum” into,
11 particularly in light of the unprecedented public functions it is intertwined with and
performs, presents a novel factual and legal issue of far ranging importance that
has as yet to be addressed, much less conclusively determined.

12 **3.21.** By their acts and omissions the defendants created a case or
13 controversy between genuinely adverse parties as defined in the Uniform
14 Declaratory Judgments Act. A determination by this Court will definitively and
15 finally resolve this controversy.

16 ¹⁶See, *A Funny Thing Happened on the Way to the Public Forum*, Elizabeth Henslee, Capital University Law
17 Review, 43:777 “The public forum doctrine is broken. It is the unruly stepchild of ... jurisprudence; it has no rules,
no limits, and it rarely behaves. The doctrine has been unevenly applied by the courts, and it is the subject of much
criticism from scholars. The classifications are unclear and poorly defined at best.”

18 ¹⁷ See Packingham, *supra*, Slip Opp. At Page 5-6, “The nature of a revolution in thought can be that, in its early
stages, even its participants may be unaware of it. And when awareness comes, they still may be unable to know or
foresee where its changes lead. Cf. D. Hawke, **Benjamin Rush: Revolutionary Gadfly**, 341 (1971)...So too here.
While we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot
appreciate yet its full dimensions and vast potential to alter how we think, express our- selves, and define who we
19 want to be. **The forces and directions of the Internet are so new, so protean, and so far reaching that courts
must be conscious that what they say today might be obsolete tomorrow.**” (emphasis supplied)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

V CAUSES OF ACTION

4.1 CONSUMER PROTECTION ACT CLAIM (19.86)

By their acts and omissions, as described above, defendants Tolia and Nextdoor violated the Washington Consumer Protection Act, RCW 19.86, by unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, including attempting to monopolize local politics and law enforcement, and exercise special privileges and immunities, and they did so unreasonably, damaging plaintiff, for which they are liable for the relief requested below.

4.2 NEGLIGENCE CLAIM

By their acts and omissions, as described above, defendants Tolia and Nextdoor violated both normal and elevated standards of care, and they did so unreasonably, damaging plaintiff, and creating a cause of action for negligence, for which they are liable for the relief requested below.

4.3 UNIFORM DECLARATORY JUDGMENTS ACT CLAIM

By their actions the defendants Seattle, Tolia and Nextdoor created an uncertainty in the conduct of public officials, and created a cause of action for declaratory relief in that an actual dispute exists between the plaintiff and the defendants, which parties have genuine and opposing interests, interests that are direct and substantial, and of which a judicial determination would be final and conclusive.

1
2 **V REQUEST FOR RELIEF**

3 Wherefore, Plaintiff respectfully requests the following relief:

4 **5.1.** That a ruling issue under the Seal of this Court finding that, under the
5 greater protections exclusively afforded by State law, defendants Nextdoor and
6 Tolia are engaged in state action and public functions including participating, via
7 *Nextdoor*, in public forum activities, and that Nextdoor may not be employed to
8 create a monopoly on municipal services or political discourse or to grant special
9 privileges or immunities.

10 **5.2.** That a Declaratory Ruling issue under the seal of this Court declaring
11 that a social media site such as *Nextdoor*, when designed to perform public
12 functions, partner with public officials to deliver law enforcement and political
13 services, and facilitate political discussions of local government issues, is the
14 functional equivalent of a public forum subject to the heightened protections of the
15 Constitution of the State of Washington, including Article I, sections 4 and 5.

16 **5.3.** That defendants be found and declared to have violated RCW 19.86.

17 **5.4.** That plaintiff be awarded costs, attorney fees, and actual and/or nominal
18 damages against defendant Nextdoor and Tolia, jointly and severably, in an amount
19 of not less than \$5.00 for their wrongful action and omissions, as described above.

Done September 24, 2018, in Olympia, Washington.

S/ Arthur West
ARTHUR WEST