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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HARBORVIEW FELLOWSHIP, a
Washington nonprofit corporation,

Plaintiff,

vs.

GOVERNOR JAY INSLEE, in his official
capacity; **SECRETARY OF HEALTH JOHN
WIESMAN**, in his official capacity,

Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AND DAMAGES**

Demand for Jury Trial

I. INTRODUCTION

1. Until Wednesday, May 27, 2020, faith communities were legally prohibited from gathering for fellowship or worship in Washington State under Governor Inslee’s Stay Home – Stay Healthy proclamation. That was true even in counties where office-based business, dining, and manufacturing industries were already permitted to resume their operations with appropriate social distancing and hygiene standards.

2. On May 27, 2020, Governor Inslee recognized that “religion is constitutionally protected” and religion, particularly its free exercise, “has a unique

1 constitutional position. . . [and] deserves an extra degree of acuity in figuring out
 2 what is in the realm of the possible.”¹ Along with this statement, Governor Inslee
 3 issued mandatory regulations that, if followed, permit the immediate resumption of
 4 public worship in all phases of Governor Inslee’s four-phased reopening plan. These
 5 regulations cap religious worship services at 100 people for outdoor services and 25%
 6 capacity or 50 people, whichever is less, for indoor services. These caps do not
 7 consider the capacity of religious organizations’ facilities or property. Harborview
 8 Fellowship welcomes the ability to resume worship, but these regulations impose
 9 discriminatory restrictions that treat faith communities less favorably than
 10 comparable nonreligious activities – such as office-based business, dining, and
 11 manufacturing industries – which are not subject to similar capacity restrictions or
 12 caps.

13 3. On Friday, May 29, 2020, Chief Justice Roberts stated that restrictions
 14 on places of worship may be permissible if the restrictions “exempt[] or treat[] more
 15 leniently *only* dissimilar activities, such as operating grocery stores, banks, and
 16 laundromats, in which people neither congregate in large groups nor remain in close
 17 proximity for extended periods.” *S. Bay United Pentecostal Church v. Newsom*, No. 20-
 18 55533, 509 U. S. ____2020 WL 2813056, at *1, 2020 LEXIS _____ (May 29, 2020).
 19 Because Washington’s Requirements for Religious Worship treat *comparable* secular
 20 gatherings – manufacturing facilities, office-based professional services, and
 21 restaurants and taverns – more favorably, they are neither neutral nor generally
 22 applicable.

23 4. Because the Requirements for Religious worship are neither neutral or
 24 generally applicable, Harborview Fellowship brings this civil rights action under the

25 _____
 26 ¹ Governor Inslee Press Conference on COVID-19. (Wash. May 27, 2020), Washington State Public
 27 <https://www.tvw.org/watch/?clientID=9375922947&eventID=2020051089&startStreamAt=2881&stopStreamAt=2911&autoStartStream=true>.

1 First and Fourteenth Amendments to the U.S. Constitution, Article I, Section 11 of
2 Washington's Constitution, and under federal law, particularly 42 U.S.C. 1983.

3 **II. PARTIES, JURISDICTION, AND VENUE**

4 5. Plaintiff, Harborview Fellowship, is a nonprofit, Christian church
5 organized exclusively for religious purposes within the meaning of Section 501(c)(3)
6 of the Internal Revenue Code.

7 6. Defendant Governor Jay Inslee is the Governor of the State of
8 Washington. Governor Inslee has responded to the coronavirus disease by declaring
9 a State of Emergency and issuing numerous proclamations, including those
10 challenged here. Violation of these proclamations can result in civil or criminal
11 penalties. Governor Inslee is named in his official capacity only.

12 7. Defendant Secretary John Wiesman is the Secretary of Health for the
13 State of Washington. He is named in his official capacity only.

14 8. This Court has subject matter jurisdiction over federal claims under 28
15 U.S.C. §§ 1331 and 1343.

16 9. This Court has authority to grant declaratory relief under 28 U.S.C. §
17 2201-02, injunctive relief under 28 U.S.C. § 1343, and reasonable attorney's fees and
18 costs under 42 U.S.C. § 1988.

19 10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a
20 substantial part of the events or omissions giving rise to the claims occurred in this
21 district.

22 **I. STATEMENT OF FACTS**

23 **A. Governor Inslee began easing emergency restrictions under a four-**
24 **phase reopening plan at the beginning of May. In the majority**
25 **of Washington's counties, industries like manufacturing,**
office-based business, and dining have resumed operations
subject to social distancing and hygiene requirements.

26 11. Washington has been in a state of emergency in response to the
27 coronavirus disease since February 29, 2020. On March 23, 2020, Governor Inslee

1 issued Proclamation 20-25 (“Stay Home – Stay Healthy”), which prohibited all
2 people in Washington State from leaving their homes, participating in any social,
3 spiritual, or recreational gatherings of any kind (regardless of the number of
4 participants) and prohibiting non-essential businesses from conducting business,
5 consistent with the limitations of the proclamation.

6 12. This proclamation had the effect of immediately suspending all in-
7 person gatherings, including religious worship services.

8 13. On Friday, May 4, 2020, Governor Inslee issued Proclamation 20-25.3
9 and his Safe Start Plan (“Safe Start Reopening Plan”), which set out a four-phased
10 recovery and reopening plan for Washington State.

11 **B. On Friday, May 29, 2020, Governor Inslee announced that his office
12 and the Department of Health will apply a new approach to
13 give counties “more flexibility” to reopen some businesses,
even in Phase One; this flexibility will not be applied to the
14 Regulations on Religious Worship.**

14 14. Beginning June 1, 2020, Governor Inslee and Secretary Wiesman will
15 apply a more flexible approach under the Safe Start-Stay Healthy Proclamation 20-
16 25.4.²

17 15. Under this new, more flexible approach, counties will have more
18 flexibility to demonstrate they can safely allow additional economic activity based on
19 targeted metrics. Any county – including Phase One counties – will be permitted to
20 apply to move to the next phase of reopening.

21 16. If approval is granted, counties will be permitted to – among other
22 things – “increase[] economic activity while sustain[ing] health and safety
23 protections.”³

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25 _____
² Proclamation by the Governor 20-25.4 (May 29, 2020)

26 <https://www.governor.wa.gov/sites/default/files/20-25.4%20-%20COVID-19%20Safe%20Start.pdf>.

27 ³ WA Governor’s Office, Inslee announces Safe Start – Washington’s Phased Reopening by county,
Medium (May 29, 2020), [https://medium.com/wagovernor/safe-start-washingtons-phased-
reopening-1436dfccc908](https://medium.com/wagovernor/safe-start-washingtons-phased-reopening-1436dfccc908).

1 17. Proclamation 20-25.4 delegates to Secretary Wiesman the authority to
2 advance specific activities to the next phase of re-opening, while limiting other
3 activities to the existing phase.

4 **C. In-person worship services were legally prohibited until May 27,
5 2020. Even now, corporate worship is permitted only in
6 compliance with the strict Requirements for Religious
7 Worship issued by Governor Inslee.**

8 18. On May 4, 2020 Governor Inslee stated that regular attendance at
9 religious services is “a vital part of the spiritual and mental health of our
10 community” and “these services can be conducted in a manner similar to comparable
11 secular activities.” Proclamation 20-25.3.

12 19. On May 6, 2020, Governor Inslee permitted drive-in worship services.

13 20. Three weeks later, on May 27, 2020, Governor Inslee held a press
14 conference to announce that public worship could immediately resume under all
15 phases of the Safe Start Reopening Plan *if* religious organization follow the strict
16 regulations (“Requirements for Religious Worship”) released by his office.

17 21. Prior to this, in-person “spiritual gatherings” were legally prohibited in
18 Phase One counties. In Phase Two counties, in-person “spiritual gatherings” – even
19 with the same social distancing and hygiene standards required of business,
20 manufacturing, and dining operations – were strictly limited to five or fewer people.

21 22. Under the Governor’s Requirements for Religious Worship, religious
22 organizations in Phase One counties may immediately resume public worship
23 outdoors on their property or, if “explicitly permitted by the local jurisdiction,” on
24 immediately adjacent property.

25 23. Regardless of the size of the property, these outdoor services are
26 limited to 100 people. That 100-person limit is inclusive of all volunteers but does not
27 include the organization’s staff.

1 24. For religious organizations in Phase Two counties – like Kitsap⁴ – the
2 Requirements for Religious Worship permit indoor services at a place of worship
3 with up to 25% capacity or 50 individuals, *whichever is less*. That 50-person cap is
4 inclusive of volunteers but does not include the organization’s staff.

5 25. Regardless of reopening phase, in-person religious services are legally
6 prohibited unless they comply not only with “the main L&I COVID19 requirements
7 to protect employees, members, and visitors” – which are required of comparable
8 industries – but also with (1) hard caps on attendance and (2) 16 additional
9 “organization-specific” safety requirements imposed only on religious organizations.

10 26. These caps and 16 “organization-specific” safety requirements apply
11 only to religious organizations as they conduct worship services, religious study
12 classes, religious ceremonies, religious holiday celebrations, weddings, or funerals.

13 27. Governor Inslee can unilaterally withdraw, restrict, or modify these
14 Requirements for Religious Worship at any time.

15 28. Governor Inslee’s Proclamation 20-25.4 now delegates to Secretary
16 Wiesman – an unelected official without the Governor’s statutory emergency
17 powers – the authority to make decisions regulating the conduct of religious
18 worship.

19 **D. Prior to issuing the Requirements for Religious Worship, Governor**
20 **Inslee issued proclamations regulating other industries.**

21 29. Prior to issuing his Regulations on Religious Worship, Governor Inslee
22 established numerous secular exceptions to the Stay Home – Stay Healthy and Safe
23 Start Reopening Plan.

24 30. Under the Safe Start Reopening Plan, numerous industries – deemed
25 “nonessential” – are permitted to reopen in Phase Two counties consistent with
26 industry-specific guidance.

27 ⁴ Pierce County Council voted unanimously to approve the county’s application to move to Phase Two on Monday, June 1, 2020.

1 31. These industries include manufacturing, office-based businesses, and
2 restaurants.

3 32. Manufacturing is permitted to resume consistent with social distancing
4 and hygiene requirements set out by Governor Inslee's office. These requirements
5 include maintaining six feet of separation between employers and workers, but
6 "when strict physical distancing is not feasible for a specific task, other prevention
7 measure are required, such as use of barriers, minimizing staff in narrow or enclosed
8 areas, and/or creating space between employees/works and job tasks as possible."

9 33. No cap on the number of employers or workers is placed on
10 manufacturing facilities.

11 34. Office-based businesses are permitted to resume operations consistent
12 with social distancing and hygiene requirements set out by Governor Inslee's office.
13 These requirements include maintaining "[six feet] of separation between employee-
14 service providers and clients in all interactions at all times. When strict physical
15 distancing is not feasible, other prevention measures are required, such as use of
16 barriers, minimization of service providers or clients in narrow, enclosed areas and
17 waiting rooms, staggered breaks, and work shift starts."

18 35. Office-based professional services are required to keep guest occupancy
19 at 50% of maximum building occupancy or lower, but no cap on the number of
20 employees or clients is placed on office-based businesses.

21 36. Restaurants and taverns are permitted to resume operations consistent
22 with social distancing and hygiene requirements set out by Governor Inslee's office.
23 Guest occupancy must be limited to 50% of maximum building capacity, but no cap
24 on the number of employees or guests is placed on restaurants or taverns.
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1 **E. Harborview Fellowship is a vibrant worshipping community that has**
2 **served Pierce and Kitsap Counties since 2004.**

3 37. Harborview Fellowship is located just outside of Gig Harbor,
4 Washington. It was formed in 2004 and today has a membership of approximately
5 250 people and an average Sunday attendance of between 250 and 325 people.

6 38. Prior to suspending public worship, Harborview Fellowship typically
7 hosted only one worship service on Sunday mornings.

8 39. Harborview Fellowship's congregation is drawn primarily from the
9 surrounding Kitsap and Pierce county communities.

10 40. Harborview Fellowship is a non-denominational, evangelical church. It
11 is not closely affiliated with any association, convention, conference, or council of
12 churches.

13 41. Harborview Fellowship's building has a sanctuary with a 375 person
14 capacity, seven classrooms that can accommodate 10 socially-distanced individuals,
15 one meeting room that can accommodate 25 socially-distanced individuals, and six
16 offices that can each accommodate a few socially distanced individuals.

17 42. The church can simulcast worship services to each of these in-house
18 overflow spaces.

19 43. The church believes that Scripture teaches, among other things, that
20 believers are to gather together for corporate prayer and worship and the gathering
21 together of the church is both good and necessary for its members' spiritual growth
22 and spiritual, mental, and emotional wellbeing.

23 44. Communal worship and ministry are at the heart of Harborview
24 Fellowship's religious beliefs and practices. The church believes that believers are the
25 church, and the church is a family.⁵

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⁵ Harborview Fellowship, <https://harborviewfellowship.org/i-m-new> (last visited June 1, 2020).

1 **F. Harborview Fellowship fully complied with Governor Inslee’s Stay**
2 **Home – Stay Healthy requirements.**

3 45. Out of an abundance of caution, Harborview Fellowship suspended
4 public worship and in-person gatherings on March 15, 2020.

5 46. This action was over a week before Governor Inslee’s Stay Home – Stay
6 Healthy Proclamation legally prohibited spiritual gatherings.

7 47. Though it suspended in-person worship and fellowship, the church
8 continues to worship through a virtual format on Sundays and through morning and
9 evening devotions hosted online. Additionally, the church and its members continue
10 to minister to the sick, the needy, and the elderly as well as they are able.

11 48. Baptisms, communion, membership vows, and – of course – all in-
12 person worship and fellowship have been suspended for over 11 weeks.

13 49. Harborview Fellowship did all this because the church understands
14 and supports the severe social restrictions that were necessary to “flatten the curve”
15 and control the spread of the coronavirus in Washington State.

16 **G. Before the Requirements for Religious Worship were issued,**
17 **Harborview Fellowship sent a letter to the Governor detailing**
18 **its plans to resume worship and social distancing and safety**
19 **precautions.**

20 50. On May 18, 2020, Harborview Fellowship sent a letter to Governor
21 Inslee asking his office to review and approve the church’s plan to resume in-person
22 worship and fellowship activities.

23 51. The letter offered details about the church’s location and demographics;
24 communication abilities (for purposes of contact tracing, if necessary); intended
25 sanitation, hygiene, and capacity protocols, and plan to resume in-person worship,
26 fellowship, and care.

27 52. The plan and protocols were prepared consistent with COVID-19 safety
and prevention guidelines for religious worship issued by the Center for Disease
Control.

1 53. The church hoped to resume indoor, in-person worship in two services
2 on June 7, 2020. One of these services was to be reserved for individuals with risk
3 factors or greater concerns for coronavirus exposure. These services would be
4 conducted consistent with social distancing and hygiene protocols provided by the
5 CDC and consistent with the social distancing restrictions and hygiene protocols
6 Governor Inslee provided to comparable industries.

7 54. The letter asked for a response from the governor so the church could
8 prepare the needed supplies, volunteers, and logistics to resume in-person worship.

9 55. The letter directed the Governor's attention to the discriminatory
10 treatment of religious organizations and faith communities under his phased
11 reopening plan, stating: "It is [] difficult for [Harborview Fellowship] to understand
12 why restaurants would be allowed to open at 50% capacity and office-based
13 businesses allowed to open entirely in Phase Two when churches are only allowed
14 gatherings of five persons."

15 56. On Friday, May 22, 2020, the governor's office was contacted via email
16 to, again, ask for a response to Harborview Fellowship's reopening plan. In response,
17 the governor's office indicated that they were still reviewing and considering the
18 church's request.

19 57. In reply, the church emphasized "the spiritual needs of people of faith
20 are of no less importance or urgency than the economic survival of businesses,
21 families and individuals" and offered a brief explanation of the church's concerns
22 regarding the unconstitutionality of the Governor's phased reopening plan.

23 58. Following the publication of the Requirements for Religious Worship
24 on Friday, May 29, 2020, the Governor's office forwarded a copy of the requirements
25 to the church. No comment on the church's plan or protocols was provided.
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1 **H. The Requirements for Religious Worship interfere with the church’s**
2 **ability to carry out its religious doctrine, faith, and mission.**

3 59. Harborview Fellowship continues to teach, worship, and encourage
4 one another as they are able. But the two-month restriction on in-person worship, the
5 current cap on attendance under the Requirements for Religious Worship, and the
6 ongoing ban of much needed fellowship are significant burdens.

7 60. Harborview Fellowship depends heavily on the “live” and hosting
8 services of a private social media company.

9 61. Unfortunately, there are Harborview Fellowship members, and
10 perhaps regular attenders and would-be guests, who do not have the resources,
11 technical ability, or access to attend the services or devotionals streamed online.

12 62. The emergency restrictions have not only impacted Harborview
13 Fellowship’s weekly worship and fellowship but have impacted the numerous ways
14 Harborview Fellowship carries out the church’s religious doctrine, faith, and mission
15 by serving its community.⁶

16 63. Harborview Fellowship, like so many faith communities, is eager to
17 resume small group fellowship and in-person worship. At that time, Harborview
18 Fellowship will again be able to gather as they understand themselves to be
19 commanded to do. They will be able to – at a social distance – pass the peace of
20 Christ, spur one another on towards love and good deeds, and encourage one
21 another as well as be fortified by the celebration of the Lord’s Supper and rejoice
22 with and welcome believers in baptism and membership in their church community.
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26 ⁶ During this time the church and its members continue to volunteer with a community effort to
27 provide supplies each week for 200 families experiencing hardship, collect thousands of dollars of
food and supplies for a local food bank, serve the residents of the church-operated transition houses in
Gig Harbor and Tacoma, and provide counselling and support for people in mental and emotional
duress.

1 **I. Courts are reviewing and rejecting discriminatory restrictions on**
2 **spiritual gatherings across the country.**

3 64. Multiple federal courts have held that applying public health
4 restrictions differently to churches and other comparable industries violates the Free
5 Exercise Clause's general applicability requirement. *See First Baptist Church v. Kelly*,
6 No. 20-cv-01102, 2020 LEXIS 68267, at *23 (D. Kan. Apr. 18, 2020) (finding that a law
7 is not generally applicable where the state did not "argue[] that mass gatherings at
8 churches pose unique health risks that do not arise in mass gatherings at airports,
9 offices, and production facilities."); *Berean Baptist Church v. Cooper*, 4:20-cv-81-D, Doc.
10 18, at 15 (E.D.N.C. May 16, 2020) (granting a temporary restraining order) ("Eleven
11 men and women can stand side by side working indoors Monday through Friday at
12 a hospital, at a plant, or at a package distribution center and be trusted to follow
13 social distancing and hygiene guidance, but those same eleven men and women
14 cannot be trusted to do the same when they worship inside together on Saturday or
15 Sunday."). In one of those decisions, the Sixth Circuit noted that "[T]he more
16 exceptions to a prohibition, the less likely it will count as a generally applicable, non-
17 discriminatory law." *Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020). In
18 emphasizing that point, the Sixth Circuit asked:

19 why do the orders permit people who practice social distancing
20 and good hygiene in one place but not another for similar
21 lengths of time? It's not as if law firm office meetings and
22 gatherings at airport terminals always take less time than
23 worship services.

24 *Id.* at 416.

25 65. Courts have also upheld restrictions on in-person worship during this
26 pandemic, but they have done so under different circumstances – namely in the
27 initial stages of the pandemic response or where restrictions are imposed consistent
with comparable industries. For example, a court upheld a restriction in the initial
stages of the pandemic response where the state conceded that a 30-person gathering
to facilitate a livestreamed worship service is permissible. *See Legacy Church, Inc. v.*

1 *Kunkel*, No. 20-cv-0327, 2020 LEXIS 68415, at *8 n.12 (D.N.M. Apr. 17, 2020) (“Legacy
2 Church is thus free to staff its services to the extent needed to worship and broadcast
3 its worship.”). Another court did so but set a strict timeframe for reopening religious
4 worship. See *Calvary Chapel of Bangor v. Mills*, 1:20-cv-00156, 2020 LEXIS 81962, at *8
5 (D. Me. May 9, 2020) (“gatherings to 50” . . . “scheduled to begin in June”).

6 66. The most recent example is *South Bay United Pentecostal Church v.*
7 *Newsom*. In that case, a 2-1 panel of the Ninth Circuit Court of Appeals and then the
8 Supreme Court each denied emergency injunctive relief against California’s phased
9 reopening plan. In explaining its decision, the Ninth Circuit relied on a 115-year-old
10 Supreme Court decision of *Jacobson v. Massachusetts*, which upheld a mandatory
11 smallpox vaccination scheme. *S. Bay United Pentecostal Church v. Newsom*, 20-55533,
12 2020 U.S. App. LEXIS 16464, at *3 (9th Cir. May 22, 2020) (“We’re dealing here with a
13 highly contagious and often fatal disease for which there presently is no known cure.
14 In the words of Justice Robert Jackson, if a ‘[c]ourt does not temper its doctrinaire
15 logic with a little practical wisdom, it will convert the constitutional Bill of Rights
16 into a suicide pact.’ *Terminiello v. City of Chicago*, 337 U.S. 1, 37, 69 S.Ct. 894, 93 L.Ed.
17 1131 (1949) (Jackson, J., dissenting)”). Chief Justice Roberts, concurring in the denial
18 of the application for injunctive relief, but writing alone, explained that California’s
19 guidelines did not meet the high bar for emergency relief because the regulations
20 treated only “dissimilar activities, such as operating grocery stores, banks, and
21 laundromats, in which people neither congregate in large groups nor remain in close
22 proximity for extended periods of time” more favorably. *S. Bay United Pentecostal*
23 *Church v. Newsom*, No. 20-55533, 509 U. S. ____2020 WL 2813056, at *1, 2020 LEXIS
24 ____ (May 29, 2020) (Roberts, J., concurring).

25 67. Washington’s regulations were implemented after the majority of
26 counties in the state had moved to Phase Two and they treat *comparable* secular
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1 gatherings – manufacturing facilities, office-based professional services, and
2 restaurants and taverns – more favorably.⁷

3 **J. The vast majority of other states have chosen not to regulate religious**
4 **worship or enacted narrower guidelines or requirements.**

5 68. As of this filing, thirty states have imposed no state-level prohibition on
6 religious worship – Wyoming, Wisconsin, West Virginia, Utah, Texas, Tennessee,
7 South Dakota, South Carolina, Pennsylvania, Oklahoma, Ohio, North Dakota, North
8 Carolina, Nebraska, Montana, Missouri, Mississippi, Michigan, Kentucky, Kansas,
9 Iowa, Indiana, Illinois, Idaho, Hawaii, Georgia, Florida, Arkansas, Arizona, and
10 Alabama.

11 69. Thirteen states and the District of Columbia have imposed some level
12 of restriction on religious worship, but they have done so on a facially equal basis
13 with comparable nonreligious activities – for example dining, business, and
14 manufacturing activities – Virginia Vermont, New Mexico, New Jersey Minnesota,
15 Massachusetts, Maryland, Louisiana, Delaware, Connecticut, Colorado, and Alaska.

16 70. And only eight states – including Washington – have imposed unique
17 and unequal restrictions on religious worship. Some of these restrictions are the
18 subject of ongoing constitutional challenges.

19 71. Oregon limits spiritual gatherings to 25 people who are consistently
20 socially distanced under Governor Brown’s Executive Order 20-25.⁸

21 72. New York limits religious gatherings to 10 or fewer people who are
22 consistently socially distanced under Governor Cuomo’s Executive Order 202.32.⁹

23 _____
24 ⁷ *S. Bay United Pentecostal Church v. Newsom*, No. 20-55533, 509 U. S. ___2020 WL 2813056, at *2, 2020
25 LEXIS _____ (May 29, 2020) (Kavanaugh, J. dissenting) “The basic constitutional problem is that
26 comparable secular businesses are not subject to a 25% occupancy cap, including factories, offices,
27 supermarkets, restaurants, retail stores, pharmacies, shopping malls, pet grooming shops, bookstores,
florists, hair salons, and cannabis dispensaries.”

⁸ Governor Brown Executive Order No. 20-25 (May 14, 2020),
https://www.oregon.gov/gov/Documents/executive_orders/eo_20-25.pdf.

⁹ Governor Cuomo Executive Order 202.33 (May 22, 2020) <https://www.governor.ny.gov/news/no-20233-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

1 73. Nevada – following receipt of a letter from the Department of Justice¹⁰
2 expressing civil rights concerns with its ban on religious gatherings of 10 or more –
3 limits religious gatherings to 50 people with strict social distancing measures under
4 Governor Sisolak’s Phase 2 Reopening Plan.¹¹

5 74. Maine limits religious gatherings to 50 people with social distancing
6 under Governor Mills’ Restarting Maine Plan.¹²

7 75. New Hampshire limits religious gatherings to 40% of maximum
8 building occupancy level under Governor Sununu’s Guidance issued May 29, 2020.¹³

9 76. Rhode Island permits spiritual gatherings that are limited to 25% of the
10 normal building capacity under Governor Raimondo’s Executive Order 20-40.¹⁴

11 77. And California limits religious gatherings to 25% of building capacity
12 or 100 people, whichever is less, consistent with Governor Newsom’s industry
13 guidance for places of worship.¹⁵

14 II. CLAIMS

15 A. Count 1: Violation of the First Amendment to the U.S. Constitution’s 16 Guarantee of the Right to Free Exercise

17 78. The church incorporates by reference paragraphs 1 through 77.

18 79. Harborview Fellowship’s sincerely held religious beliefs hold that
19 “Scripture, both Old and New Testaments, [is] the verbally inspired Word of God in

20 ¹⁰ Joyce Lupiani, *Department of Justice sends Gov. Sisolak Letter about Churches*, KTNV News, (May 26,
2020, 11:16 AM), <https://www.ktnv.com/news/coronavirus/department-of-justice-sends-gov-sisolak-letter-about-churches>.

21 ¹¹ Press Release, Nevada Governor Steve Sisolak, (May 26, 2020)
22 http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Releases_Prepared_Remarks_Guidance_for_Phase_2_Reopening_Plans_Press_Call/

23 ¹² COVID-19 Prevention Checklist Organization guidance: Phase 1: Religious Gatherings (May 22,
2020) <https://www.maine.gov/decd/sites/maine.gov/decd/files/inline-files/COVID%20Checklist%20for%20ME%20Phase%201%20Religious%20Gatherings.pdf>

24 ¹³ COVID-19 Reopening Guidance: Places of Worship (May 29, 2020)
25 <https://www.covidguidance.nh.gov/sites/g/files/ehbemt381/files/inline-documents/2020-05/guidance-worship.pdf>.

26 ¹⁴ Governor Raimondo Executive Order 20-40, (May 29, 2020), *available at*
<https://governor.ri.gov/documents/orders/Executive-Order-20-40.pdf>.

27 ¹⁵ COVID-19 Industry Guidance: Places of Worship and Providers of Religious Services and Cultural Ceremonies (May 25, 2020), *available at* <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf>.

1 its entirety, without error in the original writings [and is] the complete revelation of
2 His person and His will necessary to be understood by mankind.”

3 80. Harborview Fellowship sincerely believes that Scripture teaches the
4 necessity of, among other things, gathering together for corporate prayer and
5 worship. The church believes that the gathering together of the church is both good
6 and necessary for its members’ spiritual growth and wellbeing.

7 81. The Governor’s Safe Start Reopening Plan and Requirements for
8 Religious Worship substantially burden the free exercise of Harborview Fellowship
9 and its members, visitors, and friends by imposing discriminatory restrictions on
10 Harborview Fellowship’s worship.

11 82. The Requirements for Religious Worship chill religious exercise and
12 expression by imposing an unnecessarily low cap, without regard to the size or
13 capacity of the church’s outdoor space or indoor facilities.

14 83. The Requirements for Religious Worship chill religious exercise and
15 expression because they impose unsustainable and burdensome obligations on
16 church leadership, staff, and volunteers.

17 84. The Safe Start Reopening Plan and Requirements for Religious Worship
18 interfere with the church’s ability to carry its religious doctrine, faith, and mission.

19 85. The Safe Start Reopening Plan and Requirements for Religious Worship
20 are neither neutral nor generally applicable. *See First Baptist Church v. Kelly*, No. 20-
21 cv-01102, 2020 LEXIS 68267, at *3 (D. Kan. Apr. 18, 2020) (finding that a law is not
22 generally applicable where the state did not “argue[] that mass gatherings at
23 churches pose unique health risks that do not arise in mass gatherings at airports,
24 offices, and production facilities.”); *Berean Baptist Church v. Cooper*, 4:20-cv-81-D, Doc.
25 18, at 15 (E.D.N.C. May 16, 2020) (“Eleven men and women can stand side by side
26 working indoors Monday through Friday at a hospital, at a plant, or at a package
27 distribution center and be trusted to follow social distancing and hygiene guidance,

1 but those same eleven men and women cannot be trusted to do the same when they
2 worship inside together on Saturday or Sunday.”); *Roberts v. Neace*, 958 F.3d 409, 413
3 (6th Cir. 2020) (“[T]he more exceptions to a prohibition, the less likely it will count as
4 a generally applicable, non-discriminatory law.”).

5 86. The Safe Start Reopening Plan and Requirements for Religious Worship
6 are not neutral because they target, discriminate against, and show hostility towards
7 the faith community and houses of worship.

8 87. The Requirements for Religious Worship are not neutral or generally
9 applicable because they impose 16 organization-specific requirements on religious
10 organizations. Some of these requirements are unique to religious organizations and
11 have no corollary in the requirements imposed on comparable industries.

12 88. The Requirements for Religious Worship are not neutral or generally
13 applicable because they impose more stringent capacity limitations on the size of
14 religious worship than on comparable industries. No other comparable industry is
15 subject to a cap that does not take facility capacity into account.

16 89. The Regulations on Religious Worship are not neutral or generally
17 applicable because they do not employ the same flexibility that is applied in the new
18 Safe Start Reopening Plan.¹⁶

19 90. The Safe Start Reopening Plan and Requirements for Religious Worship
20 are susceptible to arbitrary enforcement and content and viewpoint discrimination.

21 91. The Requirements for Religious Worship are subject to content and
22 viewpoint discrimination because they require the explicit permission of local
23 officials for churches to use adjacent property for outdoor worship services. Because
24

25 ¹⁶ Governor Inslee stating “we’ve evinced an increasing flexibility on that to maybe allow some larger
26 gatherings . . . evaluated county by county as requests might come in [to] the State Department of
27 Health,” Governor Inslee Press Conference on COVID-19. (Wash. May 27, 2020), Washington State
Public Affairs Network, *available at*
<https://www.tvw.org/watch/?clientID=9375922947&eventID=2020051096&startStreamAt=2441&autoStartStream=true>.

1 the mandatory regulations give government officials discretion to grant or deny this
2 permission, the Requirements for Religious Worship are susceptible to content and
3 viewpoint discrimination.

4 92. Governor Inslee does not have a valid or compelling reason for the Safe
5 Start Reopening Plan's discrimination against faith communities and houses of
6 worship.

7 93. The Safe Start Reopening Plan and Requirements for Religious Worship
8 are not narrowly tailored to accomplish the State's interest in protecting the health
9 and safety of Washington citizens.

10 94. The Safe Start Reopening Plan and Requirements for Religious Worship
11 are not the least restrictive means available to further the State's interest in protecting
12 the health and safety of Washington citizens.

13 95. The Safe Start Reopening Plan and Requirements for Religious Worship
14 violate the First Amendment's Free Exercise Clause, both facially and as applied to
15 Harborview Fellowship.

16 96. Without declaratory and injunctive relief, Harborview Fellowship and
17 its members, visitors, and friends will be irreparably harmed.

18 97. The Safe Start Reopening Plan and Requirements for Religious Worship
19 deprive Harborview Fellowship of the First Amendment right to free exercise under
20 color of state law in violation of 42 U.S.C. § 1983.

21 **B. Count 2: Violation of the First Amendment of the U.S. Constitution's**
22 **Guarantee of the Right to Assemble for Religious Worship**

23 98. The church incorporates by reference paragraphs 1 through 97.

24 99. The First Amendment prohibits the State from violating Harborview
25 Fellowship's right to peaceably assemble.

26 100. The Safe Start Reopening Plan and Requirements for Religious worship
27 violate the constitutional rights of Harborview Fellowship because they do not serve

1 any legitimate, rational, substantial, or compelling state interest, particularly when
2 considering the unique caps imposed on religious worship services.

3 101. The Safe Start Reopening Plan and Requirements for Religious Worship
4 are not the least restrictive means available to further the State's interest in protecting
5 the health and safety of Washington citizens.

6 102. The Safe Start Reopening Plan and Requirements for Religious Worship
7 are susceptible to content and viewpoint discrimination.

8 103. The Safe Start Reopening Plan and Requirements for Religious Worship
9 violate Harborview Fellowship's constitutional right to assemble under the First
10 Amendment, both facially and as applied.

11 104. Without declaratory and injunctive relief, Harborview Fellowship and
12 its members, visitors, and friends will be irreparably harmed.

13 105. The Safe Start Reopening Plan and Requirements for Religious Worship
14 deprive Harborview Fellowship of the First Amendment right to free assembly
15 under color of state law in violation of 42 U.S.C. § 1983.

16 **C. Count 3: Violation of the First Amendment to the U.S. Constitution's**
17 **Guarantee of the Right to Free Speech**

18 106. The church incorporates by reference paragraphs 1 through 105.

19 107. The First Amendment prohibits the State from violating Harborview
20 Fellowship's right to engage in speech through its church services, devotionals, and
21 fellowship groups.

22 108. The Safe Start Reopening Plan and Requirements for Religious Worship
23 are subject to content and viewpoint discrimination as well as arbitrary enforcement.

24 109. The Safe Start Reopening Plan and Requirements for Religious Worship
25 are not the least restrictive means available to further the State's interest in protecting
26 the health and safety of Washington citizens.
27

1 110. The Safe Start Reopening Plan and Requirements for Religious Worship
2 violate Harborview Fellowship’s constitutional right to free speech under the First
3 Amendment, both facially and as applied.

4 111. Without declaratory and injunctive relief, Harborview Fellowship and
5 its members, visitors, and friends will be irreparably harmed.

6 112. The Safe Start Reopening Plan and Requirements for Religious Worship
7 deprive Harborview Fellowship of the First Amendment right to free speech under
8 color of state law in violation of 42 U.S.C. 1983.

9 **D. Count 4: Violation of Article I, Section 11 of the Washington State**
10 **Constitution**

11 113. The church incorporates by reference paragraphs 1 through 112.

12 114. Article I, Section 11 of Washington’s Constitution prohibits any
13 government action from substantially burdening the free exercise of religion unless
14 the state shows that the action is a narrow means for achieving a compelling state
15 interest. *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642,
16 211 P.3d 406, 410 (2009) (“Proceeding under article I, section 11, a party challenging
17 government action must show two things: that the belief is sincere and that the
18 government action burdens the exercise of religion. *Open Door Baptist Church v. Clark*
19 *County*, 140 Wash.2d 143, 152, 995 P.2d 33 (2000). The government must then show it
20 has a narrow means for achieving a compelling goal.”).

21 115. The Safe Start Reopening Plan and Requirements for Religious Worship
22 substantially burden Harborview Fellowship’s free exercise, religious expression,
23 and religious assembly by imposing a discriminatory and uncertain restriction on in-
24 person fellowship and corporate worship.

25 116. The Safe Start Reopening Plan and Requirements for Religious Worship
26 are not narrowly tailored to achieve the State’s interest. *Backlund v. Bd. of Comm’rs*,
27 106 Wn.2d 632, 645-46, 724 P.2d 981, 989 (1986) (“The [State] must also show that the

1 regulation involved is the least restrictive means necessary to satisfy the compelling
2 governmental interest. . . .the State must have a compelling interest and the
3 restrictive statute must have a 'nexus of necessity' with the asserted State interest. If
4 the statute's purpose may be achieved by measures less drastic than restriction of
5 First Amendment rights, the State must utilize such other measures.").

6 117. Governor Inslee's less stringent regulations on comparable industries
7 and flexible approach under the new Safe Start Reopening Plan demonstrate that the
8 State's interest in preserving health and safety can be accomplished by less
9 burdensome measures.

10 118. The Emergency Proclamation and Safe Start Reopening Plan are
11 therefore unconstitutional under Article I, Section 11 of Washington's Constitution.

12 119. In the absence of declaratory and injunctive relief, Harborview
13 Fellowship will be irreparably harmed.

14 III. PRAYER FOR RELIEF

15 Plaintiff requests the following relief:

- 16 1. A temporary restraining order, preliminary injunction, and permanent
17 injunction prohibiting the enforcement of the unconstitutional
18 provisions of the Safe Start Reopening Plan and Requirements for
19 Religious Worship.
- 20 2. A judgment declaring that the Safe Start Reopening Plan and
21 Requirements for Religious Worship violate the First Amendment to
22 the U.S. Constitution and Article I, Section 11 of the Washington State
23 Constitution.
- 24 3. Judgment for all damages authorized under Federal and Washington
25 law, including under 42 U.S.C. § 1983;
- 26 4. Prejudgment interest;

- 1 5. Costs and attorneys' fees, including attorney's fees under 42 U.S.C. §
2 1988; and
3 6. All other relief as the Court may deem just and appropriate.
4

5 DATED this June 1, 2020

6 ELLIS, LI & MCKINSTRY PLLC

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