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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. 3:20-cv-05518-RBL

**PLAINTIFF’S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

Note on Motion Calendar: June 12,  
2020

**I. INTRODUCTION**

Harborview Fellowship moves this Court for a Temporary Restraining Order to bar enforcement of those aspects of Governor Inslee’s May 27 “Requirements for Worship” that apply only to religious worship. The Requirements for Worship impose a unique and therefore unconstitutional limitation on religious assembly: a 50-person hard cap on indoor meetings regardless of capacity.

The First Amendment requires that churches be no more restrictively regulated than comparable nonreligious environments such as restaurants, offices, and manufacturing facilities, each of which involve people in the same room together

1 for more than brief periods. Provided social distancing is maintained, churches in  
2 Phase 2 counties must be permitted to assemble indoors at no less than 50% capacity  
3 with no hard attendance cap, and churches in Phase 3 counties must be permitted to  
4 assemble indoors at 75% capacity with no hard attendance cap.

5 The constitutional deficiencies in the Governor's Requirements for Worship  
6 order are illustrated by the activities of a hypothetical Pierce County family. The  
7 parents can return from a day working on the factory floor or an open-floor-plan  
8 office, then take their kids out to a restaurant, subject only to a 50% capacity limit.  
9 The family might also join a protest in close proximity with thousands of others,  
10 chanting in unison and exercising their rights of speech and assembly in opposition  
11 to systematic injustice.

12 With Pierce County in Phase 2 of the Safe Start reopening, all of that is  
13 perfectly legal. But if the same family wants to exercise its right of religious speech  
14 and assembly by attending a Sunday worship service at a church, they may be  
15 unable to attend because churches are prohibited from welcoming more than 50  
16 people (including volunteers), regardless of seating capacity. If they enter the church  
17 sanctuary after the 50 person hard cap is met, they are risking criminal and civil  
18 penalties for themselves or their church leaders, the result of an inspection or  
19 someone reporting them on the Governor's special website designated for  
20 whistleblowing on violators.

21 The dramatic disparity with which the Governor's order treats these activities  
22 with similar epidemiologic risks forms the basis for this motion.

## 23 II. STATEMENT OF FACTS

### 24 A. Harborview Fellowship prioritized the health of its congregation and 25 developed a plan to safely resume worship.

26 Harborview Fellowship is a church located just outside of Gig Harbor in  
27 Pierce County. The church has been proactive in its response to the coronavirus. On

1 March 15—a week before Governor Inslee’s Stay Home—Stay Healthy  
2 Proclamation—the church suspended public worship services out of an abundance of  
3 caution. The church streams Sunday worship services and hosts daily morning and  
4 evening devotions online. But baptisms, communion, membership vows, and in-  
5 person worship and fellowship have been suspended for over 12 weeks.<sup>1</sup>

6 The church believes that Scripture teaches that believers are to gather for  
7 corporate prayer and worship and the gathering together of the church is both good  
8 and necessary for its members’ spiritual growth and spiritual, mental, and emotional  
9 wellbeing. Communal worship and ministry are at the heart of Harborview  
10 Fellowship’s religious beliefs and practice.<sup>2</sup> So, in mid-May, with no guidance from  
11 the governor, the church developed a plan to resume corporate worship and  
12 fellowship that is consistent with guidance from the Center for Disease Control.

13 The church’s plan had four phases: (1) a parking lot dive-in service, (2) small  
14 group gatherings of up to 10 people in homes, (3) in-person outdoor worship  
15 services, then (4) in-person indoor worship services. Safety protocols were developed  
16 for each phase consistent with CDC guidance. For example, the church planned to  
17 hold two services, one for moderate-risk individuals and another for low risk  
18 individuals. Social distancing would be employed, and masks strongly  
19 recommended. Strict cleaning protocols would be implemented. And service  
20 attendance would be capped at 250 people, consistent with CDC guidelines and the  
21 capacity of Harborview Fellowship’s sanctuary (which can normally accommodate  
22 475 non-socially distanced people).<sup>3</sup>

23 Harborview Fellowship presented this plan to the Governor in a letter on May  
24 18, 2020. In addition to explaining the safety protocols, the letter also raised concerns  
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26 <sup>1</sup> Riches Decl. ¶ 21.

27 <sup>2</sup> Riches Decl. ¶ 13.

<sup>3</sup> Riches Decl. ¶ 9.

1 about how – at the time – no accommodation was made for in-person worship  
 2 during Phase 2 of the reopening plan even though manufacturing facilities,  
 3 restaurants, and office-based businesses were permitted to reopen. After the  
 4 Governor Issued the Requirements for Worship, a copy of those requirements was  
 5 forwarded to Harborview Fellowship in lieu of a response to the church’s letter.<sup>4</sup>

6 **B. Washington State’s evolving COVID-19 restrictions have continually**  
 7 **subjected religious organizations to greater restrictions than comparable**  
 8 **secular activities.**

9 **1. The initial stay-home order deemed religious worship “non-**  
 10 **essential.”**

11 In response to the COVID-19 pandemic, Governor Inslee issued Proclamation  
 12 20-25 (“Stay Home – Stay Healthy”) on March 23, 2020.<sup>5</sup> The Proclamation permitted  
 13 “essential businesses” to continue operations with strict social distancing and  
 14 hygiene protocols, but otherwise prohibited people from leaving their homes or  
 15 participating in any social, spiritual, or recreational gatherings (regardless of the  
 16 number of participants). The Proclamation suspended public worship for all faith  
 17 communities in our state.

18 **2. The Governor’s initial reopening plan imposed greater restrictions on**  
 19 **First Amendment religious assembly than on “commercial” activity.**

20 On May 4, 2020, Governor Inslee announced Proclamation 20-25.3 (“Safe  
 21 Start”), a four-phase reopening plan to incrementally relax the Stay Home – Stay  
 22 Healthy requirements.<sup>6</sup> Phase 1 began on May 4, 2020 and retained the ban on non-  
 23 essential businesses and social and spiritual gatherings.

24 Phase 2 permitted increased outdoor recreation, significantly increased  
 25 economic activities – including all manufacturing, office-based businesses, and  
 26

27 <sup>4</sup> Riches Decl. ¶ 23.

<sup>5</sup> St. Hilaire Decl. ¶ 7.

<sup>6</sup> St. Hilaire Decl. ¶ 8; this reopening plan is continued under Proclamation 20-25.4, *id.* at ¶ 9.

1 restaurants, so long as the restaurants limit their operations to 50% capacity – but  
2 continued to prohibit social or spiritual gatherings of more than five people.

3 Phase 3 permitted even further increases in economic activity: restaurants  
4 would be able to increase operations to 75% capacity; theaters would open at 50%  
5 capacity; and libraries, museums, and may resume operations. Spiritual and other  
6 gatherings could be increased from 5 to 50 people, but unlike other activities,  
7 continued to be subject to a hard cap regardless of capacity.<sup>7</sup>

8 **3. Whether in a good-faith effort to accommodate religious activity or**  
9 **under the pretext of doing so, the Governor singled out religious**  
10 **worship for special regulation.**

11 The Governor’s May 4 Safe Start order noted the essential nature of religious  
12 gatherings, including a recital promising future action to lift restrictions:<sup>8</sup>

13 **WHEREAS**, many people in Washington State attend religious services on a regular basis.  
14 Such services are a vital part of the spiritual and mental health of our community, and  
15 some of these services can be conducted in a manner similar to comparable secular  
16 activities to prevent prolonged exposure to individuals outside of their immediate  
17 household while ensuring safe social distancing and hygiene practices. And, to help inform  
18 future lifting of additional restrictions in phases, I have directed my staff to engage with a  
19 broad range of religious leaders beginning as soon as this week; and

20 The Governor quickly permitted drive in worship services (an activity with  
21 negligible epidemiological risk). Despite pleas from religious leaders to open  
22 worship, the Governor took no other action to lift restrictions for the next three  
23 weeks.

24 **4. More than three weeks after the Safe Start order and 65 days since**  
25 **prohibiting in-person worship, the Governor issued requirements**  
26 **unique to religious worship that impose arbitrary participant caps.**

27 On May 27, 2020, with more than three weeks having elapsed since the Safe  
Start order and several counties already in Phase 2, Governor Inslee announced new  
regulations for religious worship. In so doing, the Governor observed that “religion  
is constitutionally protected” and religion, particularly its free exercise, “has a unique  
constitutional position. . .[and] deserves an extra degree of acuity in figuring out

<sup>7</sup> St. Hilaire Decl. ¶ 9.

<sup>8</sup> St. Hilaire Decl. ¶ 8.

1 what is in the realm of the possible.”<sup>9</sup> Governor Inslee contemporaneously published  
 2 the related “Requirements for Worship,” a 29-point list of rules that must be  
 3 followed by those assembling for religious worship.<sup>10</sup>

4 While paying lip service to the First Amendment, the Governor continued to  
 5 impose restrictions on religious worship that did not apply to other activities with  
 6 similar epidemiological risks. The Requirements for Worship permitted outdoor  
 7 worship, but imposed a hard cap of 100 people, including volunteers. In Phase 2,  
 8 indoor worship would be permitted subject to a 25% capacity limitation or 50-person  
 9 cap, whichever was lower. The Requirements for Worship did not address religious  
 10 worship and gatherings in Phase 3, leaving churches in Phase 3 counties (and those  
 11 looking toward Phase 3 operations) to guess at the government’s position with  
 12 respect to their First Amendment rights.<sup>11</sup>

13 **5. The Requirements for Worship restrict Harborview Fellowship’s**  
 14 **ability to carry out its beliefs, doctrine, and mission.**

15 Now that the Governor has permitted in-person worship under the  
 16 Requirements for Worship, Harborview Fellowship is evaluating its ability to  
 17 conduct worship services consistent with the Requirements for Worship. In order to  
 18 comply with the 50-person cap and also serve the needs of its 250-325 person  
 19 congregation, Harborview Fellowship will be required to conduct as many as six in-  
 20 person Sunday morning services and stream an additional service for individuals  
 21 unable to attend in-person worship. Operating under the arbitrary 50-person cap is  
 22 not sustainable for Harborview Fellowship and other churches.<sup>12</sup>

23 **6. The Governor and Department of Health’s responses to mass protests**  
 24 **revealed their bias against religious speech and assembly.**

25 <sup>9</sup> Governor Inslee Press Conference on COVID-19 (May 27, 2020), *available at*  
 26 <https://www.tvw.org/watch/?clientID=9375922947&eventID=2020051089&startStreamAt=2881&stopStreamAt=2911&autoStartStream=true>.

27 <sup>10</sup> St. Hilaire Decl. ¶ 2.

<sup>11</sup> St. Hilaire Decl. Ex. 1.

<sup>12</sup> Riches Decl. ¶ 32; Toone Decl. ¶ 18.

1 George Floyd was killed on May 25, 2020. Within days, protests against  
 2 systematic injustice and police brutality sprang up nationwide. Throughout  
 3 Washington state, people marched by the thousands for days.<sup>13</sup>

4 Governor Inslee offered unequivocal support. In a Twitter thread<sup>14</sup> he  
 5 observed not only the cause behind the protests, but also the First Amendment rights  
 6 to freedom of speech and assembly:

7  Governor Jay Inslee   
 @GovInslee

8 As people gather today to protest the unjust death of  
 9 George Floyd, I hope they do so peacefully and safely.  
 10 Everyone has the freedom - and the right - to  
 11 demonstrate and speak their mind. However, violence  
 12 and destruction have no place in Washington state or  
 our country.

1:43 PM · May 30, 2020 · [Twitter Web App](#)

422 Retweets 2.8K Likes

7  Governor Jay Inslee   
 @GovInslee

8 I fully support the right to free speech and peaceful  
 9 assembly. I applaud every Washingtonian standing for  
 10 what they believe in, but we must do so in a way that  
 11 allows space for these important and necessary  
 12 discussions, not in a way that inspires fear.

1:43 PM · May 30, 2020 · [Twitter Web App](#)

60 Retweets 646 Likes

13 On June 1, 2020, Governor Inslee held a press conference addressing recent  
 14 demonstrations and offered a description of ways the state was working to protect  
 15 “people’s right to public protest while simultaneous reducing the risk to our health  
 16 in the state of Washington.” He encouraged “people to be safe for themselves and the  
 17 people around them” by “wearing a mask and . . . distancing as much as you can.”<sup>15</sup>

18 On June 2, 2020, Washington’s Department of Health published a blog post  
 19 entitled “Risking your health to fight racism (Thank you!).”<sup>16</sup> The department stated  
 20 “If you were one of many people in communities across our state who responded to  
 21 this violent act with outrage, frustration, and peaceful protest, thank you!”

22 \_\_\_\_\_

23 <sup>13</sup> George Floyd protests in Washington (state), *Wikipedia* (last updated Jun. 9, 2020),  
 24 [https://en.wikipedia.org/wiki/George\\_Floyd\\_protests\\_in\\_Washington\\_\(state\)](https://en.wikipedia.org/wiki/George_Floyd_protests_in_Washington_(state)).

25 <sup>14</sup> Governor Jay Inslee (@GovInslee), Twitter, (May 30, 2020, 1:43 PM),  
 26 <https://twitter.com/GovInslee/status/1266832690294124544>

27 <sup>15</sup> Governor Inslee Press Conference on Statewide Demonstrations (Jun. 1, 2020), *available at*  
<https://www.tvw.org/watch/?clientID=9375922947&eventID=2020061028&startStreamAt=390&autoStartStream=true>.

<sup>16</sup> Risking your health to fight racism (Thank you!), *Medium* (Jun. 2, 2020),  
<https://medium.com/wadepthealth/risking-your-health-to-fight-racism-thank-you-7a528a692f81>

1 Governor Inslee and the Department of Health have not altered or delayed the  
 2 Safe Start plan as a result of the protests.<sup>17</sup> Far from discouraging the protests, they  
 3 have supported and facilitated safe First Amendment exercise of political speech and  
 4 protest.

### 5 III. ARGUMENT

#### 6 A. Standards for Temporary Restraining Order

7 Harborview Fellowship, as a plaintiff seeking a temporary restraining order,  
 8 must establish (1) that the church is likely to succeed on the merits, (2) that the  
 9 church is likely to suffer irreparable harm without the preliminary relief, (3) the  
 10 balance of equities tips in the church's favor, and (4) an injunction is in the public  
 11 interest. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). The standard  
 12 for issuing a temporary restraining order is the same as the standard for issuing a  
 13 preliminary injunction. *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,  
 14 839 n.7 (9th Cir. 2001).

15 To grant preliminary injunctive relief, a court must find that "a certain  
 16 threshold showing [has been] made on each factor." *Leiva-Perez v. Holder*, 640 F.3d  
 17 962, 966 (9th Cir. 2011). But, because this case concerns free speech and free exercise,  
 18 the Supreme Court has held that when reviewing the likelihood of success on the  
 19 merits factor, injunctive relief is appropriate if defendants are unable, at this stage,  
 20 "to rebut [Harborview Fellowship's] contention that there are plausible, less  
 21 restrictive alternatives to the [Requirements for Worship]." *Ashcroft v. ACLU*, 542 U.S.  
 22 656, 660, 124 S. Ct. 2783, 2788, 159 L.Ed.2d 690, 698 (2004) (holding that the grant of a  
 23 preliminary injunction was appropriate where "[t]he Government has failed, at this  
 24 point, to rebut the plaintiffs' contention that there are plausible, less restrictive

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25 <sup>17</sup> For example, King County Executive Dow Constantine said that King County's application to the  
 26 Department of Health to move out of Phase 1 would not be delayed by protests. Experts concerned  
 27 coronavirus cases could rise with Seattle protests, *King 5* (last updated Jun. 2, 2020),  
<https://www.king5.com/article/news/health/coronavirus/covid-cases-protests/281-8b4b10f4-a60f-4e4f-a169-42114bb32f70>.

1 alternatives to the statute.”); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*,  
 2 546 U.S. 418, 429, 126 S. Ct. 1211, 1219, 163 L.Ed.2d 1017, 1030 (2006) (“the  
 3 Government bears the burden of proof on the ultimate question of [the challenged  
 4 Act’s] constitutionality, . . . [movants] must be deemed likely to prevail unless the  
 5 Government has shown that [movant’s] proposed less restrictive alternatives are less  
 6 effective than [enforcing the Act].”). Further, because the First Amendment is  
 7 implicated, if there is a tie in any factor, “the tie goes to the [church], not the censor.”  
 8 *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 474, 127 S. Ct. 2652, 2669, 168 L.Ed.2d 329,  
 9 349 (2007); *Ctr. for Individual Freedom, Inc. v. Ireland*, No. 1:08-cv-00190, 2008 U.S. Dist.  
 10 LEXIS 83856, at \*86 (S.D. W. Va. Oct. 17, 2008) (applying to public interest factor).

11 Here, this extraordinary remedy is required. Governor Inslee has issued  
 12 regulations “directly prohibiting [and] burdening . . . religious practices.” *See Emp’t*  
 13 *Div. v. Smith*, 494 U.S. 872, 894, 110 S. Ct. 1595, 1608, 108 L.Ed.2d 876, 895 (1990)  
 14 (O’Connor, J., concurring) (“Indeed, few States would be so naive as to enact a law  
 15 directly prohibiting or burdening a religious practice as such.”). The Safe Start  
 16 Reopening Plan and Requirements for Worship single out faith communities and  
 17 religious worship for disparate treatment and burden free exercise, they represent an  
 18 official disfavoring of religious worship as compared to other forms of protected  
 19 speech, and they do ongoing harm to faith communities that desperately need to—  
 20 safely—join together in exercise of their beliefs and pursuit of their religious mission.

21 **B. Harborview Fellowship is likely to succeed on the merits because the**  
 22 **Requirements for Worship cannot satisfy strict scrutiny review.**

23 **1. The Requirements for Worship are neither neutral nor generally**  
 24 **applicable.**

25 “The Free Exercise Clause of the First Amendment commands that ‘Congress  
 26 shall make no law . . . prohibiting the free exercise [of religion].’” This “categorically  
 27 forbids government regulation of religious beliefs.” *Smith*, 494 U.S. at 893 (O’Connor,  
 J., concurring). Because “the First Amendment does not distinguish between

1 religious belief and religious conduct, conduct motivated by sincere religious belief”  
2 is presumptively protected by the Free Exercise Clause. *Id.*

3 The Supreme Court has held that the First Amendment does not bar  
4 application of a law that burdens religious practice so long as that law is both neutral  
5 and generally applicable. *City of Boerne v. Flores*, 521 U.S. 507, 514, 117 S. Ct. 2157,  
6 2161, 138 L.Ed.2d 624, 635 (1997). If a “law is neutral and applies generally, [it will be  
7 upheld] if it is rationally related to a legitimate state purpose.” *Krishna Lunch of S.*  
8 *Cal., Inc. v. Gordon*, 797 F. App’x 311, 314 (9th Cir. 2020). Neutrality and general  
9 applicability are independent requirements. But, as the Supreme Court recognized,  
10 they “are interrelated,” so “failure to satisfy one requirement is a likely indication  
11 that the other has not been satisfied” as well. *Church of Lukumi Babalu Aye v. City of*  
12 *Hialeah*, 508 U.S. 520, 531-32, 113 S. Ct. 2217, 2226, 124 L.Ed.2d 472, 489 (1993). If a law  
13 fails in either requirement, then it is subject to strict scrutiny review. *Id.*

14 A law is not neutral if it “discriminates against some or all religious beliefs or  
15 regulates or prohibits conduct because it is undertaken for religious reasons.” *Id.*  
16 Further, if the object of a law is to infringe or restrict practices because of their  
17 religious motivation, or if it is applied in a way that fails to treat religion with neutral  
18 respect, then the law is not neutral. *See Smith*, 494 U.S. at 878-79; *Church of Lukumi*,  
19 508 U.S. at 533 (“The principle that government, in pursuit of legitimate interests,  
20 cannot in a selective manner impose burdens only on conduct motivated by religious  
21 belief is essential to the protection of the rights guaranteed by the Free Exercise  
22 Clause.”); *Masterpiece Cakeshop, Ltd. V. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1739,  
23 201 L.Ed.2d 35, 57 (2018) (Kagan, J., concurring) (“But for any law to comply with  
24 the First Amendment and *Smith*, it must be applied in a manner that treats religion  
25 with neutral respect. That means the government must apply the *same* level of  
26 generality across cases – and that did not happen here.”).

27 General applicability, in the words of Justice Souter, “is, for the most part, self-

1 explanatory.” *Church of Lukumi*, 508 U.S. at 561 (concurring in part). A law is not  
2 generally applicable if it is applied in a selective manner. *Id.* at 543.

3 Here, the Requirements for Worship fail both the neutrality and general  
4 applicability requirements because they (1) apply only to religious organizations, (2)  
5 impose more stringent limitations and unique caps on religious worship services  
6 then on other comparable activities, and (3) restrict socially-distanced religious  
7 gatherings while mass gatherings for protest are not only permitted but promoted by  
8 Governor Inslee, the Department of Health, and other state and local officials.

9 **(a) The Requirements apply only to religious organizations.**

10 The Requirements for Worship fail to satisfy even facial neutrality or general  
11 applicability. They regulate only religious communities conducting religious  
12 services. They officially discourage in-person worship, stating: “spiritual worship  
13 should continue to be done remotely or at a drive-in service. But if spiritual worship  
14 must be done in-person, the following requirements must be employed.” This official  
15 discouragement of religious worship is plain, not only from the Requirements for  
16 Worship, but also from Governor Inslee’s suggestion that “because we’re very social  
17 animals . . . it’s just too dangerous”<sup>18</sup> to allow gatherings.

18 The object and effect of the Requirements for Worship is to limit, modify, and  
19 chill religiously motivated practices. *Church of Lukumi*, 508 U.S. at 533 (“if the object  
20 of a law is to infringe upon or restrict practices because of their religious motivation,  
21 the law is not neutral”); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1130 (9th Cir. 2009)  
22 (holding the regulations were neutral because they did not “refer[] to a religious  
23 practice without a secular meaning discernable from the language or context.”).  
24 Because they apply only to religious organizations and can be unilaterally changed  
25 by Governor Inslee at any time, religious organizations are at constant risk for even  
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27 <sup>18</sup> Governor Inslee Press Conference on COVID-19 (Apr. 22, 2020), starting at 22:21, *available at*  
<https://www.tvw.org/watch/?eventID=2020041073>.

1 greater limitations on their constitutional right to free exercise, assembly for worship,  
2 and speech. *See Morris Cty. Bd. of Chosen Freeholders v. Freedom from Religion Found.*,  
3 139 S. Ct. 909, 910, 203 L.Ed.2d 425, 426 (2019) (It is a “bedrock principle of religious  
4 equality” that government may not “impose special disabilities on the basis of . . .  
5 religious status.”). These constitutional offenses could and should have been avoided  
6 by regulating similar environments in a similar way.

7 **(b) The Requirements for Worship impose more stringent**  
8 **limitations on faith communities than on industries of**  
9 **comparable size, traffic, density, and duration.**

9 Not only do the Requirements for Worship apply only to religious worship  
10 and practice, but they impose more severe restrictions on faith communities than on  
11 nonreligious environments of comparable size, traffic, density, and duration. Chief  
12 Justice Roberts made clear that, even in response to a pandemic where “local officials  
13 are actively shaping their response to changing facts on the ground, “any regulation  
14 restricting the activities of places of worship must be “consistent with the Free  
15 Exercise Clause of the First Amendment.” *S. Bay United Pentecostal Church v. Newsom*,  
16 No. 19A1044, 2020 U.S. LEXIS 3041, at \*2 (May 29, 2020) (Roberts, J., concurring). At  
17 minimum, this requires that faith communities be treated consistently with  
18 comparable nonreligious environments. *Id.*; *Jacobson v. Massachusetts*, 197 U.S. 11, 30,  
19 25 S. Ct. 358, 363, 49 L.Ed. 643 (1905) (upholding a mandatory vaccination  
20 requirement that was “applicable equally to all in like condition”). But Governor  
21 Inslee’s Requirements for Worship fail to do even that.

22 The most glaring lack of neutrality and general applicability is seen in the  
23 hard caps on attendance at religious worship services. The caps take no account of a  
24 faith community’s capacity or available space, and instead impose a one-size-fits-all  
25 ceiling on attendance. Faith communities with a capacity for 2,000 are limited to the  
26 same number of worshipers as faith communities with a capacity for only 200. No  
27 other comparable environment is subject to a similar one-size-fits-all restriction.

1 Manufacturing facilities are permitted to resume operations with social  
2 distancing and hygiene requirements. They are not limited to 50 people. Office-  
3 environments are permitted to resume operations with social distancing and hygiene  
4 protocols. They are not limited to 50 people. And restaurants and taverns are  
5 permitted to resume operations at 50% of maximum capacity (in the Phase 3  
6 counties, at 75% of capacity) with social distancing and hygiene requirements. They,  
7 again, are not limited to 50 people.

8 Each of these three environments involve the same or greater numbers of  
9 people. They involve people congregated indoors for the same or – in the case of  
10 manufacturing and office-buildings – much longer periods of time than a church  
11 worship service. But in each of these three environments social distancing and  
12 hygiene requirements are deemed sufficient to resume operations. None are subject  
13 to the hard caps on attendance that apply only to faith communities.

14 Provided social distancing and hygiene requirements are complied with, there  
15 is no legitimate, nondiscriminatory distinction made between faith communities and  
16 manufacturing facilities, restaurants, and office environments. Any differences in  
17 zoning and building capacity are accounted for with social distancing. Any  
18 differences in seating or work arrangements are – again – accounted for with social  
19 distancing. And the notion that faith communities cannot operate safely with social  
20 distancing because of isolated outbreaks traced to worship services – all before social  
21 distancing was understood and required or out of compliance with social  
22 distancing – cannot support greater limitations on faith communities when outbreaks  
23 at manufacturing facilities are widely documented as well.<sup>19</sup> Even if Governor Inslee

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25 <sup>19</sup> Midwest manufacturing workers sound alarm over COVID-19 outbreaks, *NBC News* (May 16, 2020),  
26 <https://www.nbcnews.com/news/us-news/midwest-manufacturing-workers-sound-alarm-over-covid-19-outbreaks-n1207391>; Covid-19 outbreak affects 200-plus at KC manufacturing facility, *Kansas City Business Journal* (Jun. 3, 2020),  
27 <https://www.bizjournals.com/kansascity/news/2020/06/03/covid-19-outbreak-at-kc-manufacturing-plant.html>.

1 and Secretary Wiesman claim the hard cap on attendance is in the interest of public  
2 safety, they have not consistently pursued that interest in comparable nonreligious  
3 environments. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,  
4 543, 546 (1993) (A law is not generally applicable if it permits “nonreligious conduct  
5 that endangers” the government’s interest “in a similar or greater degree” than the  
6 restricted religious activity. . . .A law that targets religious conduct for distinctive  
7 treatment or advances legitimate governmental interests only against conduct with a  
8 religious motivation will survive strict scrutiny only in rare cases.”). Therefore, the  
9 Requirements for Worship are neither neutral nor generally applicable.

10 Again, provided social distancing and hygiene precautions are taken, the  
11 constitutionally required accommodation of worship by communities of faith cannot  
12 solely be compared to appropriate accommodations for social environments like  
13 lectures, concerts, movies, spectator sports, or theatrical performances. In *South Bay*  
14 *United Pentecostal Church v. Newsom*, No. 19A1044, 2020 U.S. LEXIS 3041, at \*2 (May  
15 29, 2020), Chief Justice Roberts provided an illustrative lists of “comparable secular  
16 gathering” – including lectures, concerts, movies, spectator sports, or theatrical  
17 performances – and “dissimilar” environments – including grocery stores, banks,  
18 and laundromats. But he did not discuss the non-religious environments at issue in  
19 this case: manufacturing, office-based environments, or restaurants. The First  
20 Amendment demands a special solicitude toward free exercise. *Hosanna-Tabor*  
21 *Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189, 132 S. Ct. 694, 706, 181  
22 L.Ed.2d 650, 664 (2012). At minimum, this means that Governor Inslee and the  
23 Department of Health must accommodate faith communities to the same extent they  
24 are accommodating comparable physical environments. *Backlund v. Bd. of Comm’rs*,  
25 106 Wn.2d 632, 645-46, 724 P.2d 981, 989 (1986) (“If the [State’s] purpose may be  
26 achieved by measures less drastic than restriction of First Amendment rights, the  
27 State must utilize such other measures.”). Further, faith communities know their

1 members, regular attenders, and visitors. They can respond to any health concern as  
2 fast as office-based environments and manufacturing facilities (and certainly faster  
3 than restaurants). Worship environments generally require no touching, no  
4 communal tools, no interaction with unwashed surfaces, and worship takes place in  
5 large open environments that are ideal for social distancing. Taking into account the  
6 “special solicitude” the First Amendment requires and considering duration,  
7 proximity, and numbers of people, the most appropriate comparators for the  
8 assembly, speech, and exercise of socially-distanced faith communities are  
9 restaurants, office-based work environments, and manufacturing facilities. And  
10 religious organizations should be permitted to resume worship consistent with those  
11 comparators.

12 (c) **Washington has respected First Amendment rights to protest**  
13 **while disfavoring First Amendment right to worship.**

14 Governor Inslee and the Department of Health have not been evenhanded in  
15 their regulation of gatherings. Instead, while churches are at risk for criminal and  
16 civil penalties for outdoor services attended by more than 100 worshipers or indoor  
17 services attended by more than 50 worshipers, Governor Inslee and the Department  
18 of Health have permitted, promoted, and facilitated gatherings of unlimited size with  
19 little to no social distancing.

20 The last few weeks have seen tens of thousands of Washingtonians join  
21 nationwide expressions of outrage at the senseless death of George Floyd. Governor  
22 Inslee and state officials have responded appropriately to these protests –  
23 presumably consistent with medical and scientific understandings – by recognizing  
24 people’s First Amendment rights and deep need to be together and protest. In light  
25 of the state and local officials’ response to protests, the burdens to free exercise,  
26 assembly, and speech imposed by the Requirements for Worship on churches are – at  
27 minimum – a “departure[] from neutrality,” *Church of Lukumi Babalu Aye v. City of*

1 *Hialeah*, 508 U.S. 520, 534, 113 S. Ct. 2217, 2227, 124 L.Ed.2d 472, 491 (1993) (“The  
 2 Clause “forbids subtle departures from neutrality”), and their continued  
 3 enforcement demonstrates a low view of sincere religious beliefs about gathering for  
 4 worship, fellowship, and prayer. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights*  
 5 *Comm'n*, 138 S. Ct. 1719, 1731, 201 L.Ed.2d 35, 48 (2018) (“the government. . .cannot  
 6 impose regulations that are hostile to [] religious beliefs . . . and cannot act in a  
 7 manner that passes judgment upon or presupposes the illegitimacy of religious  
 8 beliefs and practices.”).

9 The Free Exercise Clause bars even “subtle departures from neutrality” in  
 10 matters of religion. *Id.*, at 534. Far from a “subtle departure[] from neutrality,”  
 11 Governor Inslee and the Department of Health have taken an openly different  
 12 approach to the protest gatherings. While – correctly – respecting the rights of people  
 13 to gather and protest, Governor Inslee and the Department of Health question  
 14 whether worship “must [even] be done in-person,” and presume that the First  
 15 Amendment’s requirements can be satisfied by Zoom or other virtual means.<sup>20</sup>  
 16 While – correctly – not interfering with protest gatherings in numerous public spaces,  
 17 the Requirements for Worship demand the “explicit[] permi[ssion]” of local officials  
 18 for religious communities to hold worship in an alternative location and provide that  
 19 worship may not be held on any property that is not “immediately adjacent” to the  
 20 religious organization. And, while – correctly – encouraging, promoting, and

21 \_\_\_\_\_  
 22 <sup>20</sup> “Well we specifically in our order made sure that people of gatherings of any type including  
 23 religious gatherings can continue to gather electronically as we are doing in so many contexts. And  
 24 that has been very successful talking to people in the faith community; that they have found ways  
 25 because we put it in our order that they would be able to maintain the crew in the church necessary to  
 26 run the electronic system and that's working so people have been able to worship they have been able  
 27 to electronically congregate and I think that's great because it's important to people to be able to do so.  
 But what we have found is that significant gatherings have not been able to maintain social distancing  
 in many, many accounts and that's very difficult because we're very social animals so to speak and the  
 danger of this is apparent . . . the answer to that it's just too dangerous and we issued an order that I'm  
 very confident is compliant with the Constitution in many, many ways.” Governor Inslee Press  
 Conference on COVID-19 (Apr. 22, 2020), starting at 22:21, *available at*  
<https://www.tvw.org/watch/?eventID=2020041073>.

1 facilitating protestors' free speech, the Governor has suggested that loosening  
2 restrictions on religious gatherings is "just too dangerous."<sup>21</sup>

3 The Requirements for Worship were issued just days before Governor Inslee  
4 and the Department of Health began promoting and offering guidance for protests.  
5 Governor Inslee has acknowledged that his response "appear[s] contradictory" but  
6 explained that "there is a First Amendment right to petition the government for  
7 redress of grievances."<sup>22</sup> But Governor Inslee's explanation does not account for why  
8 he would permit and facilitate one form of First Amendment exercise but insist that  
9 religious speech, exercise, and assembly be subject to arbitrary caps on attendance  
10 and other burdensome regulations. The difference in treatment is the product of  
11 either (1) a disfavoring or low view of religious speech, expression, and assembly or  
12 (2) a scientific understanding that mass gatherings of thousands of people simply do  
13 not pose the same level of risk as socially-distanced religious worship.

14 By their response to the protests, Governor Inslee and the Department of  
15 Health have made clear that the First Amendment can be accommodated while  
16 responding to the coronavirus.<sup>23</sup> The constitution requires that people of faith be free  
17 to assemble as others are. *See Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*,  
18 138 S. Ct. 1719, 1734, 201 L.Ed.2d 35, 52 (2018) ("The Constitution protects not just  
19 popular religious exercises from the condemnation of civil authorities. It protects  
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21 <sup>21</sup> *Id.*

22 <sup>22</sup> Governor Inslee Press Conference on COVID-19 (Jun. 8, 2020), available at  
<https://www.tvw.org/watch/?eventID=2020061125>.

23 <sup>23</sup> After months of pleading for social distancing, health officials support protests. Seattle Black Lives  
24 Matter warns of dangers, *Seattle Times*, June 4, 2020, [https://www.seattletimes.com/seattle-  
25 news/health/after-months-of-pleading-for-coronavirus-social-distancing-health-officials-supportive-  
26 of-protests-black-lives-matter-calls-them-too-dangerous/](https://www.seattletimes.com/seattle-news/health/after-months-of-pleading-for-coronavirus-social-distancing-health-officials-supportive-of-protests-black-lives-matter-calls-them-too-dangerous/) ("[Governor] Inslee, who for months has  
27 been both pleading with and ordering people to stay home to slow the spread of the virus, has had a  
different message with regard to the protests. Instead of asking people to stay home, he [has] asked  
that they wear masks and try to keep some distance amid the crowds. "I'm very hopeful people will  
remain committed both to justice in our society and survival against COVID-19," Inslee said  
Wednesday. "We ought to be able to do both at the same time.")

1 them all.”). In light of the State’s greater accommodation of political speech, faith  
2 communities must immediately be permitted to meaningfully gather again in  
3 exercise of their faith and religious speech.

4 **2. Because they are neither neutral nor generally applicable, the**  
5 **Requirements for Worship are subject to strict scrutiny review.**

6 Because the Requirements for Worship are neither neutral nor generally  
7 applicable, they are subject to strict scrutiny review. *Church of Lukumi Babalu Aye v.*  
8 *City of Hialeah*, 508 U.S. 520, 546, 113 S. Ct. 2217, 2234, 124 L.Ed.2d 472, 499 (1993).  
9 Meaning, Governor Inslee and Secretary Wiesman must show that it was not possible  
10 to design guidelines or regulations that prohibit unsafe conditions in similar  
11 environments across industries. *Id.* at 547 (“a law cannot be regarded as protecting an  
12 interest ‘of the highest order’ . . . when it leaves appreciable damage to that  
13 supposedly vital interest unprohibited.”). Defendants can satisfy strict scrutiny only  
14 by moving beyond “broadly formulated” arguments about public health and  
15 proving the “asserted harm of granting specific exemptions to particular religious  
16 claimants.” *Gonzales v. O Centro Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006)  
17 (“[W]here government restricts only conduct protected by the First Amendment and  
18 fails to enact feasible measures to restrict other conduct producing substantial harm  
19 or alleged harm of the same sort, the interest given . . . is not compelling.”) They  
20 cannot make that showing.

21 To illustrate a less restrictive approach that *could* have been applied to  
22 religious organizations, the Department of Health offered the following six  
23 guidelines to those participating in mass protests:

- 24 • Wear a cloth face covering
- 25 • I know it’s crowded, but please try to stay six feet away from  
26 other people as much as possible.
- 27 • Stay home if you are even a little bit sick.

- 1 • Take hand sanitizer with you and use it frequently. Don't pass  
2 up an opportunity to wash your hands with soap and water.
- 3 • Cover your coughs and sneezes.
- 4 • Avoid touching your eyes, nose, and mouth with unwashed  
5 hands.

6 If these guidelines are sufficient for one form of First Amendment speech during a  
7 pandemic, then they are sufficient for the speech of faith communities.

8 Further, Governor Inslee and the Department of Health determined that  
9 groups of much larger than 50 can safely gather indoors for hours at a time, so long  
10 as they observe social distancing and hygiene protocols. This less restrictive  
11 approach taken with manufacturing facilities, office-based environments, and  
12 restaurants demonstrates that no cap on attendance at worship services is necessary  
13 to ensure public health and safety.

14 **3. Courts have rejected regulations that target and disparately impact  
15 faith communities.**

16 Washington is not the only state battling coronavirus. As other states have  
17 responded, regulations requiring faith communities to suspend or modify in-person  
18 worship have faced legal challenges. Where challenged regulations were found to be  
19 non-neutral, selectively applied, or where they failed to afford free exercise the  
20 "special solicitude" demanded by the First Amendment, courts applied strict  
21 scrutiny and granted immediate relief to petitioning faith communities. *see Roberts v.*  
22 *Neace*, 958 F.3d 409 (6th Cir. 2020); *Berean Baptist Church v. Cooper*, No. 4:20-CV-81-D,  
23 2020 U.S. Dist. LEXIS 86310 (E.D.N.C. May 16, 2020); *On Fire Christian Ctr. v. Fischer*,  
24 No. 3:20-CV-264-JRW, 2020 U.S. Dist. LEXIS 65924 (W.D. Ky. Apr. 11, 2020); and *First*  
25 *Baptist Church*, No. 20-1102-JWB, 2020 U.S. Dist. LEXIS 68267 (D. Kan. Apr. 18, 2020).  
26 Consistent with these cases, Washington's Requirements for Worship are likely to be  
27 found unconstitutional.

At the same time, courts have rejected requests for preliminary injunctive  
relief where a challenged regulation has no discriminatory intent or effect and is both

1 neutral and generally applicable, *see, e.g., Legacy Church, Inc. v. Kunkel*, No. CIV 20-  
2 0327 JB \ SCY, 2020 U.S. Dist. LEXIS 68415 (D.N.M. Apr. 17, 2020); *Cassell v. Snyders*,  
3 No. 20 C 50153, 2020 U.S. Dist. LEXIS 77512 (N.D. Ill. May 3, 2020). In *South Bay*  
4 *United Pentecostal Church v. Newsom*, \_\_ S. Ct. \_\_, No. 19A1044, 2020 WL 2813056  
5 (May 29, 2020), the Supreme Court denied a request for an emergency injunction  
6 against California’s guidelines for religious services, which were modified in the  
7 course of the appeal. Chief Justice Roberts, concurring in the 5-4 decision but writing  
8 alone, made clear that California’s restriction on churches implicated the First  
9 Amendment. However, he explained that under the posture of the case, the church  
10 did not meet the high bar for relief because the regulations “exempt[] or treat[] more  
11 leniently only dissimilar activities, such as operating grocery stores, banks, and  
12 laundromats, in which people neither congregate in large groups nor remain in close  
13 proximity for extended periods.”

14 However, no court has addressed a state’s overt favoring of political speech  
15 while restricting religious worship or addressed regulations – like Washington’s –  
16 that impose hard caps of 50 worshipers and volunteers on faith communities while  
17 requiring only social distancing in comparable nonreligious environments.

18 **4. Because the Requirements for Worship are not neutral or generally**  
19 **applicable, no deference is owed under *Jacobson*.**

20 The Ninth Circuit Court of Appeals and Chief Justice Roberts looked to  
21 *Jacobson v. Massachusetts*, addressing a mandatory smallpox vaccination requirement,  
22 to deny preliminary injunctive relief. Chief Justice Roberts explained that local  
23 officials should have an “especially broad” latitude to respond to the coronavirus, an  
24 effort “fraught with medical and scientific uncertainties” and should not be second  
25 guessed by the judiciary in “matter[s] subject to reasonable disagreement.” *S. Bay*  
26 *United Pentecostal Church v. Newsom*, \_\_ S. Ct. \_\_, No. 19A1044, 2020 WL 2813056  
27 (May 29, 2020) (Roberts, J, concurring); citing *Jacobson v. Massachusetts*, 197 U.S. 11,

1 30, 25 S. Ct. 358, 363, 49 L.Ed. 643 (1905) (upholding a mandatory vaccination  
2 requirement that was “applicable equally to all in like condition”) and *Marshall v.*  
3 *United States*, 414 U.S. 417, 427 (1974). That standard does not apply here.

4 *Jacobson* emphasizes that the Court offered deference under emergency  
5 conditions because the state applied restrictions “equally to all in like condition.” 197  
6 U.S. 11, 30, 25 S. Ct. 358, 363, 49 L.Ed. 643 (1905). And, recognizing the potential  
7 abuse of local officials, the *Jacobson* Court concluded its opinion by emphasizing:

8 Before closing this opinion we deem it appropriate, in order to  
9 prevent misapprehension as to our views, to observe -- perhaps  
10 to repeat a thought already sufficiently expressed, namely -- that  
11 the police power of a State, whether exercised by the legislature,  
12 or by a local body acting under its authority, may be exerted in  
such circumstances or by regulations so arbitrary and oppressive  
in particular cases as to justify the interference of the courts to  
prevent wrong and oppression.

13 *Jacobson v. Massachusetts*, 197 U.S. 11, 38, 25 S. Ct. 358, 366, 49 L.Ed. 643 (1905).

14 *Jacobson*’s limitations are consistent with the limitation articulated by Justice  
15 Roberts in his *South Bay United Pentecostal Church* concurrence. Chief Justice Roberts  
16 explained that deference must not be afforded to state action that exceeds the scope  
17 of reasonable disagreement. No. 19A1044, 2020 U.S. LEXIS 3041, at \*3 (May 29, 2020).  
18 But because Washington State has treated religious speech, assembly, and exercise  
19 less favorably than comparable environments or political speech, the constitutional  
20 problems in the Restrictions on Worship cannot be described simply as a “reasonable  
21 disagreement.”

22 Further, the Ninth Circuit has rejected the argument that First Amendment  
23 concerns should be given less weight in the context of an emergency. In *Menotti v.*  
24 *City of Seattle*, the Ninth Circuit Court of Appeals held that in matters of First  
25 Amendment concerns, deference should not be given simply “because [a state action]  
26 was taken in good faith and there was a factual basis to decide that [the state action]  
27 was necessary to maintain order” because that deference “does not permit a

1 sufficiently nuanced review of the First Amendment rights at stake.” *Menotti v. City*  
 2 *of Seattle*, 409 F.3d 1113, 1142 n.55 (9th Cir. 2005) (addressing emergency restrictions  
 3 covering a large part of downtown Seattle that were applicable, day and night, for  
 4 multiple days). Instead, in *Menotti*, the Ninth Circuit reviewed the challenged  
 5 emergency action under established First Amendment principles. In this case, that  
 6 means the Requirements for Worship are subject to strict scrutiny review.

7 Even if some level of intermediate scrutiny is applied, the Requirements for  
 8 Worship cannot meet that standard. To survive intermediate scrutiny, “the State  
 9 must show . . . that the [Requirements for Worship] directly advance[] a substantial  
 10 governmental interest and that the measure is drawn to achieve that interest.” *Sorrell*  
 11 *v. IMS Health Inc.*, 564 U.S. 552, 572, 131 S. Ct. 2653, 2668, 180 L.Ed.2d 544, 560 (2011).  
 12 Importantly, this standard requires not only that “the State's interests are  
 13 proportional to the resulting burdens placed on speech but also that the law does not  
 14 seek to suppress a disfavored message.” *Id.* Because they fail to treat faith  
 15 communities similarly to comparable environments and because the Governor and  
 16 Department of Health have overtly favored political speech over religious speech, the  
 17 Requirements for Worship will not satisfy intermediate scrutiny.

18 **C. Harborview Fellowship, and other similarly situated faith communities will**  
 19 **continue to suffer irreparable harm in the absence of a TRO.**

20 The Supreme Court and the Ninth Circuit Court of Appeals have repeatedly  
 21 recognized that “[t]he loss of First Amendment freedoms, for even minimal periods  
 22 of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347,  
 23 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Klein v. City of San Clemente*, 584 F.3d 1196,  
 24 1207–08 (9th Cir. 2009). Harborview Fellowship and other faith communities are  
 25 certainly suffering this harm.<sup>24</sup> Courts have also consistently recognized the  
 26 “significant public interest” in upholding free speech principles, because the

27 <sup>24</sup> Riches Decl. ¶¶ 14-17, 25-33; Toone Decl. ¶¶ 15-21.

1 “ongoing enforcement of the potentially unconstitutional regulations ... would  
2 infringe not only the free expression interests of [plaintiffs], but also the interests of  
3 other people” subjected to the same restrictions. *Klein*, 584 F.3d at 1208. The balance  
4 of hardships tips sharply in Harborview Fellowship’s favor.

5 The hardship Harborview Fellowship and its congregation face is a continued  
6 restriction on the ability to practice their faith. The burdensome regulations, ongoing  
7 restrictions, arbitrary caps on attendance, and threat of inspection and criminal  
8 sanction chill the exercise of constitutional rights and are an incalculable hardship to  
9 Harborview Fellowship and its congregation.<sup>25</sup>

10 In contrast, an injunction would impose little to no hardship on the state.  
11 Governor Inslee and Secretary Wiesman would be required only to adopt  
12 nondiscriminatory guidelines for religious worship, consistent with those *already*  
13 developed for comparable nonreligious environments. *See Coll. Republicans v. Reed*,  
14 523 F. Supp. 2d 1005, 1012 (N.D. Cal. 2007) (“defendants ... are in a position to adopt,  
15 at least on an interim basis, a more narrowly crafted set of provisions that enable the  
16 defendants to achieve their legitimate ends. . .”) Alternatively, defendants could  
17 simply suggest that religious communities follow the same guidance offered to those  
18 participating in the recent protests.

19 **D. An injunction is in the public interest.**

20 An injunction is in the public interest because “the public interest favors the  
21 exercise of First Amendment rights.” *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014).  
22 There is “significant public interest” in upholding free speech principles because  
23 “ongoing enforcement of [] potentially unconstitutional regulations ... would infringe  
24 not only the free expression interests of [Harborview Fellowship], but also the  
25 interests of other people” subject to the same restrictions. *Klein v. City of San Clemente*,

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<sup>25</sup> Riches Decl. ¶¶ 28-33; Toone Decl. ¶¶ 13,16, 18-21.

1 584 F.3d 1196, 1208 (9th Cir. 2009).<sup>26</sup>

2 Considering rapidly expanding economic activity and the Governor Inslee  
3 and the Department of Health’s recent promotion of mass gatherings, allowing faith  
4 communities to resume socially distanced worship will not hamper the state’s  
5 response to the coronavirus. Instead, treating similarly situated entities in  
6 comparable ways and treating political and religious speech in the same way will  
7 permit the state to pursue its public health interest while also preserving “bedrock  
8 free-exercise guarantees.” *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th  
9 Cir. 2020).

10 **IV. CONCLUSION**

11 There are no valid, non-discriminatory reasons to impose greater restrictions  
12 on faith communities than on nonreligious environments of comparable size, traffic,  
13 density, and duration. And there are no valid, non-discriminatory reasons why  
14 religious free exercise, speech, and assembly can be burdened, while alternative First  
15 Amendment expressions and assembly are permitted and promoted by defendants.  
16 Because the Safe Start Reopening Plan and Regulations for Worship are neither  
17 neutral nor generally applicable, and because there are plausible less restrictive  
18 alternatives to the Requirements for Worship, a Temporary Restraining Order is  
19 necessary.

20 DATED June 9, 2020

21  
22 ELLIS, LI & MCKINSTRY PLLC

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<sup>26</sup> Riches Decl. ¶¶ 25-33; Toone Decl. ¶¶ 12-13, 16-21.

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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. 3:20-cv-05518-RBL

**[PROPOSED] ORDER GRANTING  
TEMPORARY RESTRAINING  
ORDER**

This matter having come before the Court on Plaintiff’s Motion for a  
Temporary Restraining Order, and the Court having reviewed the papers filed by the  
parties, the record in this action, and any other pleadings and argument of the parties  
relevant to the issues raised therein;

IT IS HEREBY ORDERED THAT Plaintiff’s motion is granted. Until further  
order of this Court, defendants and anyone acting in concert with defendants are  
enjoined from enforcing or threatening to enforce the hard attendance caps in the  
May 27, 2020 “Requirements for Worship.”

1 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

ELLIS, LI & McKINSTRY PLLC

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