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IN THE SUPERIOR COURT OF WASHINGTON FOR WALLA WALLA COUNTY

WILLIAM CLEARY and SHERRA RENA)	
CLEARY husband and wife residing in King)	CASE NO.
County, NICHOLAS HOLMES, an individual)	
residing in Whitman County, JOSHUA)	COMPLAINT
JACKSON, an individual residing in)	
Snohomish County, STEVEN COLLINS, an)	JURY DEMANDED
individual residing in Pierce County, Danielle)	
D. Oyen, an individual residing in Walla Walla)	
County, WA 4 FREEDOM, SPC is a)	
Washington Special Purpose Corporation, <i>et</i>)	
<i>al.</i>)	
)	
Plaintiffs,)	
)	
v.)	
)	
JAY INSLEE, Governor of the State of)	
Washington and the STATE OF)	
WASHINGTON,)	
)	
Defendants.)	

I. INTRODUCTION

1. Governor Jay Inslee’s August 9, 2021 mandate requiring all state workers to be vaccinated against COVID-19 by October 18, 2021 exceeds the authority of his office by the Washington Constitution statute, and, independently, violates the rights guaranteed to the state workers by the Washington constitution and applicable statutes. “The

1 provisions of this Constitution are mandatory, unless by express words they are declared
2 to be otherwise.” WA Const. Art. I, Sec. 29.

- 3 2. The intent, and result, of the Governor’s Mandate violates the principal of RCW
4 38.52.120, by resulting in certain protected political and religious classes being purged
5 from civil service (“No organization for emergency management established under the
6 authority of this chapter shall participate in any form of political activity, nor shall it be
7 employed directly or indirectly for political purposes”) and the Governor cannot suspend
8 laws if the “the waiver or suspension would conflict with the rights, under the First
9 Amendment, of freedom of speech or of the people to peaceably assemble” (RCW
10 43.06.220(2)(g) (iii)), particularly where WA Const. Art. I, Sec. 11 guarantees: “Absolute
11 freedom of conscience in all matters of religious sentiment, belief and worship, shall be
12 guaranteed to every individual, and no one shall be molested or disturbed in person or
13 property on account of religion.... No religious qualification shall be required for any
14 public office or employment.”
- 15
- 16 3. Plaintiffs intend to amend this Complaint to add thirty to fifty-thousand additional
17 similarly situated Plaintiffs.

18 **II. PARTIES AND JURISDICTION**

- 19 4. Plaintiff WILLIAM CLEARY is a firefighter and Catholic, residing in King County with
20 his wife, SHERRA REA. CLEARY, a healthcare worker who has previously, formerly,
21 declined the flu shot in her professional capacity, Ms. Cleary is also pregnant but will not
22 be given an exemption from the Governor’s Mandate even for the two months remaining
23 in her pregnancy.
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5. Plaintiff NICHOLAS HOLMES is a Spokane firefighter, an individual in Whitman County.
6. Plaintiff JOSHUA JACKSON is a member of the Washington State Patrol, an individual residing in Snohomish County.
7. Plaintiff JUSTIN AUSBORN is a member of the Washington State Patrol, an individual residing in Lewis County.
8. Plaintiff JENN BARRETT is a member of the Washington State Patrol, an individual residing in Clark County.
9. Plaintiff KATELYN BAXTER is a member of the Washington State Patrol, an individual residing in Spokane County.
10. Plaintiff PHILLIP BERG is a member of the Washington State Patrol, an individual residing in Lewis County.
11. Plaintiff BRETT BISHOP is a member of the Washington State Patrol, an individual residing in Lincoln County.
12. Plaintiff REBECCA BONNELL is a member of the Washington State Patrol, an individual residing in Snohomish County.
13. Plaintiff TRAVIS BRADWDY is a member of the Washington State Patrol an individual residing in _____ County.
14. Plaintiff IOSIF BRICI is a member of the Washington State Patrol, an individual residing in _____ County.
15. CHRISTOPHER BRUNER is a member of the Washington State Patrol, an individual residing in Stevens County.

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16. Plaintiff PAUL CARROLL is a member of the Washington State Patrol, an individual residing in _____ County.

17. Plaintiff TREVOR COLTRANE is a member of the Washington State Patrol, an individual residing in Clark County.

18. Plaintiff BRITTANY CROSBY is a member of the Washington State Patrol, an individual residing in Benton County.

19. Plaintiff JEREMY DELANO is a member of the Washington State Patrol, an individual residing in Spokane County.

20. Plaintiff ROBERT DIRKS is a member of the Washington State Patrol, an individual residing in Yakima County

21. Plaintiff BRANDI DOLPH is a member of the Washington State Patrol, an individual residing in Yakima County,

22. Plaintiff BRANDON DUMONT is a member of the Washington State Patrol, an individual residing in Mason County.

23. Plaintiff SAM EAGLE is a member of the Washington State Patrol, an individual residing in Skagit County.

24. Plaintiff HEATHER FORAKER is a member of the Washington State Patrol, an individual residing in Kitsap County

25. Plaintiff RANDY GARCIA is a member of the Washington State Patrol, an individual residing in Yakima County.

26. Plaintiff ROBERT GOODIN is a member of the Washington State Patrol, an individual residing in _____ County.

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27. Plaintiff SKYLOR GRASSETH is a member of the Washington State Patrol, an individual residing in Snohomish County.

28. Plaintiff DAVID HOWARD is a member of the Washington State Patrol, an individual residing in Spokane County,

29. Plaintiff TYLER HOWLAND is a member of the Washington State Patrol, an individual residing in Spokane County,

30. Plaintiff CHRIS HUHTA is a member of the Washington State Patrol, an individual residing in _____ County,

31. Plaintiff COREY KINGMAN is a member of the Washington State Patrol, an individual residing in Pierce County.

32. Plaintiff MITCHEL KORNER is a member of the Washington State Patrol, an individual residing in _____ County.

33. Plaintiff VICTOR LITOVCHENKO is a member of the Washington State Patrol an individual residing in Whatcom County.

34. Plaintiff SHANE MADISON is a member of the Washington State Patrol, an individual residing in _____ County.

35. Plaintiff JOHN MANDENHALL is a member of the Washington State Patrol, an individual residing in _____ County.

36. Plaintiff CHRISTOPHER MANN is a member of the Washington State Patrol, an individual residing in _____ County.

37. Plaintiff ANNETTE MCMURTRAY is a member of the Washington State Patrol, an individual residing in _____ County.

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38. Plaintiff SERENA MOREFIELD is a member of the Washington State Patrol, an individual residing in Pierce County.

39. Plaintiff JASON NICHOLS is a member of the Washington State Patrol, an individual residing in _____ County,

40. Plaintiff JENNIFER ORTIZ is a member of the Washington State Patrol, an individual residing in Clark County.

41. Plaintiff KELLY PARKER is a member of the Washington State Patrol, an individual residing in _____ County.

42. Plaintiff PAUL PETRINOVICH is a member of the Washington State Patrol, an individual residing in Mason County.

43. Plaintiff JONATHAN PITTS is a member of the Washington State Patrol, an individual residing in Kitsap County.

44. Plaintiff EION ROHRBAUGH is a member of the Washington State Patrol, an individual residing in Snohomish County.

45. Plaintiff ADAM ROSKAMP is a member of the Washington State Patrol, an individual residing in Spokane County, DUSTIN STEPHAN, an individual residing in Thurston County.

46. Plaintiff CELINA THOMAS is a member of the Washington State Patrol, an individual residing in Clark County.

47. Plaintiff RICHARD THOMPSON is a member of the Washington State Patrol, an individual residing in Clark County,

48. Plaintiff MARGARET TIPPINS is a member of the Washington State Patrol, an individual residing in Douglas County.

1 49. Plaintiff ALICIA VAUGHAN is a member of the Washington State Patrol, an individual
2 residing in Mason County,

3 50. Plaintiff BARBARA WERNER is a member of the Washington State Patrol, an
4 individual residing in Spokane County,

5 51. Plaintiff is Jason Webster, an employee of Spokane Fire Department, residing in Spokane
6 County.

7 52. Plaintiff is Kari O'Briant, an employee of University of Washington Medicine, residing
8 in King County.

9 53. Plaintiff is Joshua Jackson, an employee of Washington State Patrol, residing in
10 Snohomish County.

11 54. Plaintiff is Michele Vasquez, an employee of Washington State Department of Revenue,
12 residing in Benton County.

13 55. Plaintiff is Samuel Eagle, an employee of Washington State Patrol, residing in Skagit
14 County.

15 56. Plaintiff is Danielle Martz, an employee of Washington State Patrol, residing in Yakima
16 County.

17 57. Plaintiff is Jennifer Ortiz, an employee of Washington State Patrol, residing in Clark
18 County.

19 58. Plaintiff is Brian Bolling, an employee of Washington State Ferries, residing in Jefferson
20 County.

21 59. Plaintiff is Nancy Rinker, an employee of Tahoma School District No. 409, residing in
22 King County.
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60. Plaintiff is Annette McMurtray, an employee of Washington State Patrol, residing in Pierce County.

61. Plaintiff is Heather Foraker, an employee of Washington State Patrol, residing in Kitsap County.

62. Plaintiff is Gelu Cazacopol, an employee of Washington State Ferries, residing in Island county.

63. Plaintiff is Katelyn Baxter, an employee of Washington State Patrol, residing in Spokane County.

64. Plaintiff is Jeremy Grene, an employee of Washington State Ferries, residing in Snohomish County.

65. Plaintiff is Joseph Greene, an employee of Washington State Ferries, residing in Island County.

66. Plaintiff is Nick Claiborne , an employee of Valley Regional Fire , residing in Snohomish County.

67. Plaintiff is Brandon Coursey, an employee of Washington State Ferries, residing in Snohomish County.

68. Plaintiff is Olivia LaCount, an employee of City of Sedro Wooley Fire Department, residing in Skagit County.

69. Plaintiff is Kevin Craig, an employee of Aberdeen Fire Department, residing in Grays Harbor County.

70. Plaintiff is Dustin Hullbrock, an employee of Lacey Fire District No. 3, residing in Pierce

71. Plaintiff is Carrie Kaltenbach , an employee of Northshore School District, residing in King County.

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72. Plaintiff is Erin Bolas, an employee of UWMC NW, residing in King County.

73. Plaintiff is Serena Morefiled, an employee of Washington State Patrol, residing in Pierce County.

74. Plaintiff is Jordan Newman, an employee of Raymond Fire Department, residing in Pacific County.

75. Plaintiff is David W. Johnson, an employee of Puget Sound RFA, residing in Thurston County.

76. Plaintiff is Michael Watkins, an employee of Washington State Ferries, residing in Snohomish County.

77. Plaintiff is Dustin Stephan, an employee of Washington State Patrol, residing in Thurston County.

78. Plaintiff is Jeremy DeLano , an employee of Washington State Patrol, residing in Spokane County.

79. Plaintiff is Gordy Pine, an employee of Washington State Ferries, residing in Kitsap County.

80. Plaintiff is Danielle D. Oyen, an employee of Dept. of Corrections, residing in Walla Walla County.

81. Plaintiff is John EB Oyen, an employee of Dept. of Corrections, residing in Walla Walla County.

82. Plaintiff is Autumn R. Lewis, an employee of Dept. of Corrections, residing in Walla Walla County.

83. Plaintiff is Eric Burt, an employee of Dept. of Corrections, residing in Walla Walla County.

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84. Plaintiff is Andrea Burt, an employee of Dept. of Corrections, residing in Walla Walla County.

85. Plaintiff is Tonya Gould, an employee of Dept. of Corrections, residing in Walla Walla County.

86. Plaintiff is Orland Gould, an employee of Dept. of Corrections, residing in Walla Walla County.

87. Plaintiff is Johnathan Phillips, an employee of Dept. of Corrections, residing in Walla Walla County.

88. Plaintiff is Nicolette Phillips, an employee of Dept. of Corrections, residing in Walla Walla County.

89. Plaintiff is Troy Head, an employee of Dept. of Corrections, residing in Walla Walla County.

90. Plaintiff is Gary Pierce, an employee of Dept. of Corrections, residing in Walla Walla County.

91. Plaintiff is Cody Havens, an employee of Dept. of Corrections, residing in Walla Walla County.

92. Plaintiff is Steven Collins, an employee of Seattle Fire Department, residing in Pierce County.

93. All other named Plaintiffs and all members of WA 4 Freedom, SPC are state employees or otherwise face termination pursuant to the Governor's Mandate.

94. Jay Inslee is the Governor of the State of Washington.

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95. The State of Washington (the “State”) is a Defendant in this matter due to the actions, and imminent actions, of the various agencies or instrumentalities by which Plaintiffs are employed.

96. This Court has jurisdiction over this action under RCW 2.08.010.

97. Venue is appropriate in Walla Walla County pursuant to RCW 4.92.010 (1).

III. FACTS

98. Some Plaintiffs have sought to secure medical exemptions from the Governor’s Mandate.

99. Some Plaintiffs have, as a right by statute and a right secured by the Washington Constitution, sought a religious exemption from the Governor’s Mandate.

100. As a condition of considering the Plaintiffs’ religious exemptions, the state or its agencies have required the submission of a “religious questionnaire” which improperly inquired into protected private affairs regarding health care decisions and religious sentiment, belief, and worship.

101. Inslee’s General Counsel Kathryn Leathers coordinated the exemption language with the Attorney General’s Office and wrote in an August 3, 2021 email “Exemptions: medical for sure; and religious (if we have to; if yes, as narrow as possible)” (emphasis added).

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From: [Sonju, Eric A. \(ATG\)](#) [REDACTED]
To: [Leathers, Kathryn \(GOV\)](#) [REDACTED]
[Cortez, Dawn C. \(ATG\)](#) [REDACTED]
[Merchant, David \(ATG\)](#) [REDACTED]
CC: [Wonhoff, Taylor \(GOV\)](#) [REDACTED]
[Petrie, Valerie B \(ATG\)](#) [REDACTED]
Date: 2021-08-04 11:37:44 AM
Subject: RE: New mandatory vaccine proclamation
Attachments: rssExec.pdf

Thought you'd all be interested to see this order from the 7th Circuit denying a motion for an injunction pending appeal against Indiana University's vaccination mandate. The district court denied plaintiff students' preliminary motion, which they're now appealing.

From: Leathers, Kathryn (GOV) [REDACTED]
Sent: Tuesday, August 3, 2021 5:52 PM
To: Cortez, Dawn C. (ATG) [REDACTED] Merchant, David (ATG) [REDACTED]
Cc: Wonhoff, Taylor (GOV) [REDACTED] Sonju, Eric A. (ATG) [REDACTED] Petrie, Valerie B (ATG) [REDACTED]
Subject: New mandatory vaccine proclamation

[EXTERNAL]

Dawn and Dave,

The decision has been made. We are now definitely going in the direction of a mandatory vaccine for all employees in certain areas of employment: public and private healthcare, congregate settings (like DOC and LTC facilities), and state employees who work for the Exec cabinet. We may branch out to other separately electeds' employees, but we will start with our staff.

Other:

- Mandatory weekly testing until such time as you are fully vaccinated.
- For the private healthcare settings, we want to require that they have a policy in place that mandates vaccines by "X" date ("X" TBD).
- Exemptions: medical for sure; and religious (if we have to; if yes, as narrow as possible).
 - o Adding Eric Sonju and Valerie Petrie to help with the exemptions.
- Still trying to nail down how long the unvaccinated person has to become fully vaccinated, TBD.
- Consequence: This is a condition of employment. You lose your job if you do not comply (and, the privates are prohibited from employing or continuing to employ anyone who is not fully vaccinated by X date).

I will get you the list of what qualifies as healthcare and congregate settings asap.

Governor wants to announce this week, if possible. If we need more time, we can announce this week and issue on Monday. Usual moving target on a short timeframe. So sorry.

Can you get this one started (tomorrow)?

Thank you,

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102. Most Plaintiffs has submitted the improperly required and “as narrow as possible” “religious questionnaire.”

103. Some Plaintiffs have had their religious sincerity questioned and have been forced to provide additional information.

104. Some of the Plaintiffs have previously recovered from COVID-19 and/or obtained a positive antibody test for COVID-19.

105. Some of the Plaintiffs have fulfilled their duties working from home throughout the pandemic and long beforehand.

106. The Governor knows that different standards for different employees is possible.

107. In an internal email Senior Assistant Attorney General Eric Sonju wrote: "My understanding of requiring health care and long-term care provider employees to get vaccinated is to protect patients/residents and protect the capacity of our system from being threatened by continued spread. The purpose isn't primarily to get vaccination numbers up in that population in order to fight COVID-19 more generally," Mr Sonju went on: "However, for executive cabinet agency employees, the purpose really is to get vaccine numbers up and having the state lead by example. So maybe a bifurcated approach would make sense. Health care and long-term care provider employees are required to get vaccinated and their employers are prohibited from letting them enter the workplace or provide in-person services if they don't. Executive cabinet agency employees are required to get vaccinated by 10/18 and the agencies are prohibited from employing them if they do not. That said, if the preference is to stay with a prohibition on employment for all, I think it is certainly defensible."

1 108. Compliance with the Governor's Mandate is not prohibitory, but mandatory, and
2 requires affirmative action by each Plaintiff, to wit: being injected with a vaccine.

3 109. Each Plaintiff faces termination pursuant to the Governor's Mandate.

4 110. Means less restrictive than termination exist to accomplish the Government's purpose,
5 even if it were authorized and/or made for an illegal purpose.

6 111. The Governor is aware that less restrictive means exist.

7 112. Caitlyn Jekel, senior policy advisor on labor for the Governor's Office, wrote in an
8 email that the executive team decided to include an option allowing workers to opt-out
9 of the vaccine in favor of weekly COVID-19 testing, stating: "State government will start
10 with a testing strategy option and the governor will announce an October 1st review, with
11 the potential to shift to a full mandate at that time," Jekel wrote.

12 113. The penalties for not taking affirmative action to comply with the Governor's Mandate
13 are overly severe, punitive, and unconscionable.

14 114. The penalty is further arbitrary and capricious where not tailored to those state
15 employees with natural immunity by virtue of prior infection and/or the ability to perform
16 their duties from home.

17 115. If the Plaintiffs or any of them are terminated, suspended or separated by resignation
18 from their employment for non-compliance with the Governor's Mandate, they will
19 suffer extensive monetary loss and non-monetary irreparable damages, to be proven at
20 trial. The extent and nature of these damages, existing in perspective, there on the
21 propriety and constitutionality of the Governor's Mandate and are here asserted for that
22 purpose; recovery, to the extent such damages occur, will be sought by separate action
23 or amendment in compliance with the requirements of RCW 4.96.020.
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IV. FIRST CAUSE OF ACTION

Violation of Separation of Powers

116. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

117. Plaintiffs seek a declaration of this Court that the Governor’s Mandate exceeds the scope of the Governor’s authority as it is written and as it is being enforced.

118. While the Washington State Constitution grants the Governor certain express powers, the Governor lacks inherent legislative power except as provided in the Constitution or properly delegated by a statute.

119. The Governor’s Mandate exceeds the authority granted to his office by RCW 43.06.220.

120. RCW 45.06.220 (1) grants the Governor authority only to prohibit certain activities.

121. The Governor’s Mandate does not prohibit conduct, but requires the affirmative act of obtaining a vaccination, which requires a touching, invasion of the person and invasion of a citizen’s bodily integrity.

122. The Governor’s Mandate is not authorized by RCW 45.06.220 (2) and, if it is, has expired pursuant to RCW 45.06.220 (4).

123. The Governor’s first Proclamation of a State of Emergency was made February 29, 2020.

124. By axiom, an event lasting over twenty months is not emergent.

125. Use of emergency powers by the legislature may only continue for a time reasonable for the legislature to act pursuant to WA Const. Art. I, Sec. 42, quoted immediately below.

1 126. “The legislature, in order to insure continuity of state and local governmental
2 operations in periods of emergency resulting from a catastrophic incident or enemy
3 attack, shall have the power and the duty, immediately upon and after adoption of this
4 amendment, to enact legislation providing for prompt and temporary succession to the
5 powers and duties of public offices of whatever nature and whether filled by election or
6 appointment, the incumbents and legal successors of which may become unavailable for
7 carrying on the powers and duties of such offices; the legislature shall likewise enact
8 such other measures as may be necessary and proper for insuring the continuity of
9 governmental operations during such emergencies.” WA Const. Art. I, Sec. 42.

10
11 127. Where the legislature cannot indefinitely act under a state of emergency, the Governor,
12 whose authority flows from the legislature, cannot declare a permanent state of
13 emergency.

14 128. The Governor’s Mandate further conflicts with the purpose of WA Const. Art I, Sec.
15 42 because it threatens to, and if acted upon will, significantly disrupt government
16 “continuity” across schools, law enforcement, firefighting, prisons, transportation, and
17 other civil services; including, specifically operation fo the Walla Walla State
18 Penitentiary.

19 129. Specifically, the Governor’s Mandate, by reducing already understaffed schools,
20 conflicts with the “paramount duty of the State” found at WA Const. Art. IX, Sec. 1 &
21 2.

22
23 130. The state will undoubtedly rely upon authority such as *Jacobson v. Commonwealth of*
24 *Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905). For example, without
25 limitation, a specific statute, not executive fiat, authorized vaccination in Massachusetts in

1 1905; ; the mortality rate of small pox was significantly greater than COVID-19; and, even
2 under those circumstances, the penalty authorized was a five (\$5.00) dollar fine (adjusted for
3 inflation, less than five-hundred and fifty dollars (\$550)) not termination and potential
4 professional decertification.

5 131. *Jacobson* actually illustrates the Governor’s lack of authority: “According to settled
6 principles, the police power of a State must be held to embrace, at least, such reasonable
7 regulations **established directly by legislative enactment** as will protect the public health and
8 the public safety.... A local enactment or regulation, even if based on the acknowledged police
9 powers of a State, must always yield in case of conflict with the exercise by the General
10 Government of any power it possesses under the Constitution, or with any right which that
11 instrument gives or secures.” 197 U.S. at 24-25 (citation omitted).

12
13 132. The Governor lacks authority “established directly by legislative enactment” to mandate
14 vaccination.

15 133. Any such enactment would require compliance with the Administrative Procedures Act,
16 RCW 34.05, which the Governor has attempted to circumvent.

17 134. In Washington, the legislature gave the Board of Health, and not any other state official, the
18 authority to create regulations for “the prevention and control of infectious...diseases.” RCW
19 43.20.050(2)(f).

20 135. The legislature further provided for local boards of health to enforce regulations
21 adopted by either the state board of health and local boards of health. RCW 70.05.070.

22
23 136. In Washington, unlike in Massachusetts, the legislature has reserved to itself the
24 decision on whether mandatory vaccines would be needed and, when needed, the
25 legislature has so exercised that power in the case of school children (RCW 28A.210), it

1 has affirmatively not exercised that power for adults, nor has it delegated that specific
2 power to either the state or local boards of health as in *Jacobson*.

3 137. The Washington State Board of Health is only able to require school children to be
4 vaccinated by regulation because of such legislative authority.

5 138. There is no statutory authority enacted by the Washington legislature that provides for
6 such a mandate or delegation of that decision.

7 139. Further, it is local health boards, if authorized by the legislature, which enact local
8 policy, not dictates from the Secretary of the Department of Health, and not the Governor
9 himself. See, e.g., WAC 246-100-036(1): “The local health officer shall establish, in
10 consultation with local health care providers, health facilities, emergency management
11 personnel, law enforcement agencies, and any other entity he or she deems necessary,
12 plans, policies, and procedures for instituting emergency measures necessary to prevent
13 the spread of communicable disease or contamination,”

14 140. The legislature reinforced this local command and control system for public health
15 response when it passed a bill entitled “Pandemic Influenza Preparedness.” RCW 70.26.

16 141. The centerpiece of RCW 70.26 is the requirement for each county, not the state, create
17 “pandemic flu preparedness and response plans.” “An effective response to pandemic
18 influenza in Washington **must focus at the local level** and will depend on preestablished
19 partnerships and collaborative planning...” RCW 70.26.010(5) (emphasis added).
20

21 142. The State can present no evidence that local health officials have so failed that the
22 Secretary of the Department of Health may bypass them under RCW 43.70.130(7), and,
23 regardless, to construe a pandemic as the type of emergency that would require the
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1 Secretary of the Department of Health to assume local control would not make sense in
2 light of the stated legislative intent in RCW 70.26.010(5).

3 143. There is nothing in RCW 43.06.220 or 43.06.010 tying the Governor’s emergency
4 powers to pandemics or health emergencies.

5 144. The Governor can exercise emergency powers to address infestations of plant pests and
6 aquatic invasive species. *See* RCW 43.06.010(13) and RCW 43.06.010(14). No similar
7 legislation authorizes the Governor to address viruses or pandemics.

8 145. RCW 43.06.010(12) authorizes the Governor to act provided that the governor’s power
9 only extend to the “area affected” by a “public disorder, disaster, energy emergency, or
10 riot...which affects life, health, property, or the public peace,” but that section was
11 originally adopted to “control or suppress riots or unlawful strikes...” and not to address
12 health emergencies. *See* 1965 c 8 § 43.06.010. Prior: 1890 p 627 § 1; RRS § 10982.

13 146. If the legislature wanted to add to the sphere of appropriate gubernatorial emergency
14 power it could easily have done so, particularly when it enacted RCW 70.26. It did not
15 and has not otherwise done so.

16 147. The Governor cannot shoehorn powers expressly delegated elsewhere by the
17 legislature, (such as RCW 70.26, WAC 246-100, and WAC 246-110), into general
18 legislation such as RCW 43.06.010(12).

19 148. The definitions found in RCW 38.52.010 do not include local health districts or
20 departments because they are not a “county, city or town” and do not “provide
21 firefighting, police, ambulance, medical, or other emergency services;” EMD therefore
22 does not play a supervisory role that can supplant the statutory and regulatory authority
23 of local health officers, and the Governor cannot exercise such control either.
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1 149. The Governor cannot suspend laws if the “the waiver or suspension would conflict
2 with the rights, under the First Amendment, of freedom of speech or of the people to
3 peaceably assemble.” RCW 43.06.220(2)(g) (iii), only health officers have the authority
4 granted from the legislature to prevent people from congregating in ways that spread
5 disease. WAC 246-100-030(3). So, too, independent of the foregoing statute’s
6 prohibition on the governor infringing First Amendment rights only health officers have
7 the ability to mandate a vaccine, and only to the extent authorized by the legislature,
8 which has, in turn, only authorized mandatory vaccination of school children.

9 **V. SECOND CAUSE OF ACTION**

10 **Deprivation of life, liberty, or property, WA Const. Art. I, Sec. 3.**

11 150. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

12 151. No person shall be deprived of life, liberty, or property, without due process of law.

13 WA Const. Art. I, Sec. 3.

14 152. The Plaintiffs each face deprivation of their life, liberty, or property as a direct
15 consequence of both the State’s inquiries on the religious questionnaire which is not
16 consistent with due process, and the Governor’s Mandate which was not properly or
17 legally enacted, and which is not consistent with due process.

18 153. Public employees have a property interest in their position which cannot be terminated
19 without due process, which includes and requires a right to a hearing. *Board of Regents*
20 *v Roth*, 408 US at 564 (1972); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105
21 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).
22
23

24 **VI. THIRD CAUSE OF ACTION**

25 **Deprivation of privacy, WA Const. Art. I, Sec. 7.**

1 154. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

2 155. No person shall be disturbed in his private affairs, or his home invaded, without
3 authority of law. WA Const. Art. I, Sec. 7.

4 156. This constitutional right to privacy includes autonomy over one's medical care, and
5 includes the right to refuse treatment. See, e.g., *In re Welfare of Colyer*, 99 Wn.2d 114,
6 119–22, 660 P.2d 738 (1983); *see also* RCW 7.70.050.

7 157. The decision to suffer the battery of a vaccination is a private affair which further
8 impacts a citizen's bodily integrity.

9 158. The Plaintiffs have each been deprived of their right to privacy by the Governors
10 Mandate.

11 159. The Plaintiffs have each been deprived of their right to privacy through the invasive
12 nature of the religious exemption questionnaire drafted and required to be submitted by
13 the State.
14

15 **VII. FOURTH CAUSE OF ACTION**

16 **Deprivation of Religious Freedom, WA Const. Art . I, Sec. 11.**

17 160. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

18 161. The Governor's Mandate and the requirement for the religious exemption questionnaire
19 are contrary to and transgress WA Const. Art. I, Sec. 11. "Absolute freedom of
20 conscience in all matters of religious sentiment, belief and worship, shall be guaranteed
21 to every individual, and no one shall be molested or disturbed in person or property on
22 account of religion.... No religious qualification shall be required for any public office
23 or employment."
24
25

1 162. The Plaintiffs absolute right to religious freedom has been infringed and further infringement
2 is imminent.

3 163. The Governor’s Mandate, in conjunction with the State’s religious exemption questionnaire
4 by design, intent, and by consequences results in both a religious qualification being required
5 for public office or employment, and transgress the Washington Constitution’s guarantee of
6 absolute freedom of conscious in all matters of religious sentiment, belief and worship, and
7 result in an unauthorized molestation or disturbance of the Plaintiff’s persons.

8 **VIII. FIFTH CAUSE OF ACTION**

9 **Violation of Freedom of Speech and Assembly**

10 164. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

11 165. The governor cannot suspend laws if the “the waiver or suspension would conflict with
12 the rights, under the First Amendment, of freedom of speech or of the people to peaceably
13 assemble.” RCW 43.06.220(2)(g) (iii).

14 166. By referencing the First Amendment and not WA Const. Art. 1, Sections 4 & 5, the
15 legislature enacted state law that further prohibits infringement of those rights guaranteed by
16 the First Amendment of freedom of speech and to assemble under the Federal Constitution
17 cannot be waived or suspended by the Governor.

18 167. “Religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in
19 order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450
20 U.S. 707, 714 (1981). *See also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508
21 U.S. 520, 531 (1993) (same).
22
23
24
25

1 168. First Amendment Protects Religious Beliefs and Requires Religious Exemptions; and
2 Prohibits Arbitrary “Rules,” False and Misleading “Forms” and other types of “Guidance”
3 Designed to Block Workers From Obtaining Religious Exemptions.

4 169. “The right of petition and of the people peaceably to assemble for the common good shall
5 never be abridged.” WA Const. Art. 1, Sec. 4.

6 170. “Every person may freely speak, write and publish on all subjects, being responsible for the
7 abuse of that right.” WA Const. Art. 1, Sec. 5.

8 171. The Plaintiffs’ rights under the First Amendment, which cannot be waived or suspended by
9 the Governor, in addition to their rights under Art. 1, Sections 4 & 5 of the Washington State
10 Constitution have been infringed and face imminent threat of additional infringement.
11

12 **IX. SIXTH CAUSE OF ACTION**

13 **Violation of the Washington Law Against Discrimination**

14 172. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

15 173. It is unlawful for any employer to refuse to hire or to “discharge or bar any person from
16 employment because of ... creed..” RCW 49.60.180(2).

17 174. No employer, including the State of Washington, may “print, or circulate, or cause to be
18 printed or circulated any statement, advertisement, or publication, or to use any form of
19 application for employment, or to make any inquiry in connection with prospective
20 employment, which expresses any limitation, specification, or discrimination as to...creed...”.
21 RCW 49.60.180(4).
22

23 **X. SEVENTH CAUSE OF ACTION**

24 **Excessive and unconscionable penalties, lesser available means and balancing**

25 175. Plaintiffs re-allege all allegations of this Complaint as if fully set forth herein.

1 176. The penalties provided for through the Governor's Mandate are extreme and unconscionable,
2 and include, but are not limited to, loss of employment, career, livelihood and being made the
3 subject of public opprobrium.

4 177. Excessive fines or penalties are contrary to WA Const. Art. 1, Sec. 14.

5 178. Even if the Governor's Mandate is in any respect viable, which it is not, a less punitive means
6 of accomplishing its asserted purpose are available, particularly in regard to these Plaintiffs,
7 who have contracted COVID-19 and can produce a positive antibody test result.

8 179. The Governor and the state cannot produce evidence that the available vaccines create either
9 greater immunity, or lower transmissibility of the offending virus or its mutations that a natural
10 immunity produced by the human immune system and established to exist through a positive
11 antibody test.⁵⁶ In view of the positive antibody tests, the rights and interests of these
12 Plaintiffs, including but not limited to their religious rights and interests, should be balanced
13 properly against the public interest asserted in the Governor's Mandate; such balancing
14 analysis has not been made, and has been affirmatively avoided by the Governor and the State.

15
16 **PRAYER FOR RELIEF**

17 NOW, THEREFORE, Plaintiffs, pray for the following:

- 18 1. That the Court vacate the Governor's Mandate as unconstitutional pursuant to the
19 Constitution of the State of Washington, and/or as being in excess of that office's
20 statutory authority, and/or as a violation of RCW 38.52.120.
21
22 2. In the event the Court finds that any portion of the Governor's Mandate is viable, it is
23 prayed that the Court will reform the penalties called for in the Governor's Mandate to
24 those which are fair and reasonable, that religious exemptions be allowed to consistent
25 with the provisions of the Washington Constitution, and exempting those with a positive

1 antibody test, and those who can fulfill their duties from home from any coverage
2 whatsoever under the Governor's Mandate.

3 3. For such other and further relief as to the court is just and equitable.

4 DATED this 10th day of September 2021.

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