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18 **Admitted pro hac vice*

19 **UNITED STATES DISTRICT COURT**
 20 **EASTERN DISTRICT OF WASHINGTON**

21 **CHRIST’S CHURCH OF MT.**
 22 **SPOKANE; WESTGATE**
 23 **CHAPEL**

24 *Plaintiffs,*

25 v.

26 **JAY INSLEE**, in his official
 capacity as Governor of
 Washington; **ROBERT**
FERGUSON, in his official
 capacity as the Attorney General
 of Washington; **BRET D.**
DAUGHERTY, in his official
 capacity as Adjutant General;
JOHN BATISTE, in his official

Case No.: 2:20-cv-00197

Judge Thomas O. Rice

SECOND AMENDED
VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Demand for Jury Trial

1 capacity as Chief of the
2 Washington State Patrol; **OZZIE**
3 **KNEZOVICH**, in his official
4 capacity as Sheriff of Spokane
5 County; **ADAM FORTNEY**, in his
6 official capacity as Sheriff of
7 Snohomish County,
8 *Defendants.*

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1 **INTRODUCTION**

2 1. This action challenges Governor Jay Inslee’s proclamations
3 and guidance, which narrowly restrict indoor church services while
4 exempting and treating more leniently comparable secular activities
5 where large groups of people gather in close proximity for extended
6 periods of time.
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9 2. In counties under Phase 2 of the current reopening plan, the
10 Governor’s guidance prohibits indoor church services exceeding 25%
11 capacity or 200 individuals, *whichever is less* (“Church Gathering Ban”).
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14 3. Meanwhile, the Governor grants de facto gathering
15 exemptions to 158 broad classifications of secular activity he designates
16 as “essential.” These exemptions apply even when the “essential”
17 activity is not constitutionally protected and is not essential to public
18 health and safety, such as cannabis retail, coffee production, breweries,
19 and wineries. These exemptions also apply even when the “essential”
20 activity involves large groups of people gathering in close proximity for
21 extended periods of time, such as airports and airplanes, trains,
22 subways, company cafeterias, “big box” stores, and many office-based
23 businesses.
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1 4. Besides activity described as “essential,” the Governor
2 grants exemptions and more lenient restrictions to even “non-essential”
3 secular activity. This favorable treatment applies even when such “non-
4 essential” activity is not constitutionally protected, and when that
5 activity involves large groups of people gathering in close proximity for
6 extended periods of time.
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9 5. Under Phase 2 of the current reopening plan, a more
10 favorable 50% capacity allowance—with no numerical cap—applies for
11 restaurants and taverns, professional offices, real estate businesses, pet
12 grooming businesses, tattoo parlors, barbershops, and hair or nail
13 salons.
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16 6. Also under Phase 2 of the current reopening plan, a more
17 favorable 30% capacity restriction (up to 200 people) applies for
18 conventions, conferences, business meetings, training, testing, and
19 other similar activities held at miscellaneous venues, including indoor
20 convention centers and hotel meeting spaces.
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22
23 7. For over two months, Plaintiffs Christ’s Church of Mt.
24 Spokane (“Christ’s Church”) and Westgate Chapel (“Westgate”)
25 (collectively, “the Churches”) were unable to hold indoor worship service
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1 due to the Governor’s proclamations prohibiting in-person religious
2 gatherings. The Churches patiently waited for the Governor to restore
3 their First Amendment freedoms, trusting that he would prioritize
4 constitutional rights and allow churches to resume in-person services at
5 the earliest opportunity.
6
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8 8. But that trust was shattered. Rather than prioritize
9 religious freedom, the Governor maligned spiritual gatherings as
10 “COVID-19 ‘superspreader’ events,” and imposed uniquely onerous
11 restrictions on churches while granting favorable treatment to a broad
12 range of similar secular activity.
13
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15 9. The Churches operate in counties that have proceeded to
16 Phase 2 of the current reopening plan, yet the Church Gathering Ban
17 restricts the Churches from holding substantive indoor services, even
18 when such services would comply with the same capacity, social
19 distancing, and sanitation standards that the State accepts as sufficient
20 for comparable secular activity.
21
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23 10. Regardless of the justifications the Governor may think he
24 has for this disparate treatment, they cannot survive constitutional
25 scrutiny. Under the Free Exercise Clause, a law is not generally
26

1 applicable when it “fail[s] to prohibit nonreligious conduct that
2 endangers” the government’s interest “in a similar or greater degree”
3 than the prohibited religious conduct. *Church of the Lukumi Babalu*
4 *Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). That is exactly
5 what the exemptions under the Governor’s orders do.
6
7

8 11. Consistent with their religious beliefs, the Churches plan to
9 resume indoor worship services up to 50% capacity and have developed
10 comprehensive social distancing and health protocols to govern those
11 services. Despite these measures, however, the Governor’s Church
12 Gathering Ban threatens the Churches with criminal penalties.
13
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15 12. Without injunctive relief, the Churches will face criminal
16 penalties for exercising their sincerely held religious beliefs by
17 assembling for worship. A temporary restraining order and injunction
18 are necessary to preserve the Churches’ constitutional rights.
19
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21 **JURISDICTION AND VENUE**

22 13. This civil rights action raises federal questions under the
23 United States Constitution, specifically the First and Fourteenth
24 Amendments, and under federal law, particularly 42 U.S.C. § 1983.
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1 20. Jay Inslee is the Governor of Washington. Governor Inslee is
2 responsible for issuing and enforcing the Church Gathering Ban. He is
3 sued in his official capacity only.
4

5 21. Robert Ferguson is Washington's Attorney General.
6 Attorney General Ferguson is authorized, both individually and
7 through his subordinates, to enforce and prosecute violations of the
8 Church Gathering Ban. He is sued in his official capacity only.
9
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11 22. Defendant Bret D. Daugherty is Washington's Adjutant
12 General. General Daugherty is authorized, both individually and
13 through his subordinates, to enforce and prosecute violations of the
14 Church Gathering Ban. He is sued in his official capacity only.
15

16 23. Defendant John Batiste is Chief of the Washington State
17 Patrol. As Chief, Defendant Batiste has the power, both individually
18 and through his subordinates, to enforce the Church Gathering Ban. He
19 is sued in his official capacity only.
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22 24. Defendant Ozzie Knezovich is the Sheriff of Spokane
23 County. As Sheriff of Spokane County, Defendant Knezovich has the
24 power, both individually and through his subordinates, to enforce the
25 Church Gathering Ban. He is sued in his official capacity only.
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1 25. Defendant Adam Fortney is the Sheriff of Snohomish
2 County. As Sheriff of Snohomish County, Defendant Fortney has the
3 power, both individually and through his subordinates, to enforce the
4 Church Gathering Ban. He is sued in his official capacity only.
5

6 FACTUAL ALLEGATIONS

7 **The Churches**

8
9 26. Founded in 1959, Westgate has been serving its community
10 for over 61 years.

11
12 27. Westgate is proud of its multicultural community, including
13 members representing at least 62 nations, some of whom—including
14 church leadership—marched in recent protests and demonstrations
15 following the tragic killing of George Floyd. Westgate also contributes to
16 its community by maintaining a food and clothing bank, hosting
17 ministries for people with special needs and those experiencing
18 homelessness, and by hosting a “healing and recovery” group for around
19 120 people requiring support for issues involving drug abuse,
20 alcoholism, addiction, and other harmful activities.
21

22 28. Founded in 2001, Christ’s Church has been serving its
23 community for over 19 years. Initially founded as Liberty Church of
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1 Christ of Spokane, the church changed its name to Christ's Church of
2 Mt. Spokane in 2010.
3

4 29. The Churches are autonomous churches with no
5 denominational affiliation.
6

7 30. The Churches believe that the Bible is the inspired Word of
8 God, fully true and accurate, and thus the infallible rule of faith and
9 practice.
10

11 31. The Bible is the foundation on which the Churches operate
12 and is the basis on which they are governed.
13

14 32. The Churches believe, among other things, that the Bible
15 affirms the infinite dignity of every human person made in the image of
16 God, and commands Christians to gather in person for corporate prayer,
17 worship, and fellowship, and that such assembly is necessary and good
18 for the Churches and their members' spiritual growth.
19

20 33. The Churches believe that the Bible commands Christians to
21 gather in fellowship to hold one another accountable and responsible, to
22 provide the support necessary to overcome challenges and temptations,
23 and to help each other grow spiritually. Indeed, the Churches believe
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1 that the purpose and value of their activities flows out of their meetings
2 as a corporate body for worship.
3

4 **The Churches' Plans to Resume In-Person Services**

5 34. In response to the Governor's orders, Westgate suspended
6 in-person services on or around March 15, 2020, and Christ's Church
7 suspended in-person services on or around March 19, 2020.
8

9 35. More than two months later, the Governor's Church
10 Gathering Ban prevented the Churches from resuming in-person
11 worship services.
12

13 36. Christ's Church does not have full-time staff, and thus does
14 not have the resources to record or livestream services.
15

16 37. The Churches lack the equipment and resources necessary to
17 successfully implement radio broadcasts for drive-in services.
18

19 38. In addition, some of the Churches' parishioners do not have
20 internet access or the ability to participate in online services.
21

22 39. The Churches believe they are called to resume in-person
23 worship services, consistent with their religious beliefs about corporate
24 prayer, worship, and fellowship.
25

26 40. The Churches sincerely believe that online services and

1 drive-in services do not satisfy the Bible's requirement that the
2 Churches meet in person for corporate worship.
3

4 41. The Churches plan to resume in-person worship services,
5 but the Governor's Church Gathering Ban makes such services illegal
6 and subjects the Churches to possible criminal penalties.
7

8 42. Christ's Church's sanctuary has a capacity of about 110, and
9 before the pandemic it typically hosted around 60 attendees during
10 Sunday worship services. Christ's Church seeks to hold indoor services
11 at 50% of its sanctuary's capacity (about 55 people), and has configured
12 its seating to provide for proper social distancing of at least six feet
13 separation between families and individuals:
14
15



1 43. Westgate has two separate meeting areas, each with its own
2 egress, ingress, and restrooms. These spaces include a sanctuary that
3
4 seats 1300 people and a fellowship hall that seats 400 people. Westgate
5 seeks to hold indoor services at (or less than) 50% of capacity in these
6
7 areas (up to 300-400 people in the sanctuary and up to 200 people in the
8 fellowship hall), and has configured its seating to provide for proper
9
10 social distancing of at least six feet separation between families and
11 individuals:



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23 44. In preparation for resuming in-person worship services, the
24 Churches have adopted—and will follow—strict social distancing and
25 health and safety protocols.
26

1 45. To ensure proper social distancing, the Churches have
2 assigned seats for each church family and individual, and have provided
3
4 for at least six feet of separation between each individual or family.

5 46. In addition, the Churches' health and safety protocols
6 include:
7

- 8 • Directing attendees to one designated entrance;
- 9 • Having greeters open doors for attendees;
- 10 • Requiring all greeters to wear gloves and masks;
- 11 • Advising attendees of proper social distancing protocols;
- 12 • Encouraging attendees to wear face coverings and masks;
- 13 • Providing masks and gloves to those who wish to wear them
14 and do not have their own;
- 15 • Making hand sanitizer stations easily accessible to
16 attendees, and encouraging attendees to bring their own
17 hand sanitizer;
- 18 • Providing disinfecting wipes for attendees to wipe down any
19 surfaces;
- 20 • Using prepackaged communion elements whenever served;
- 21 •
- 22 •
- 23 •
- 24 •
- 25 •
- 26 •

- 1 • Instructing attendees to refrain from congregating in the
- 2 building;
- 3
- 4 • Dismissing attendees by sections to ensure that members
- 5 maintain social distancing; and
- 6
- 7 • Thoroughly cleaning and sanitizing sanctuary, hallways,
- 8 bathrooms, and common surfaces before and after Sunday
- 9 service.
- 10

11 **The Governor's Covid-19 Orders**

12 47. On February 29, 2020, Governor Inslee declared a state of
13 emergency in response to the Covid-19 outbreak. Proclamation 20-05,
14 attached as **Exhibit 1**.

15

16 48. Declaring that “a State of Emergency exists in all counties in
17 the state of Washington,” the Governor directed “State agencies and
18 departments . . . to utilize state resources and to do everything
19 reasonably possible to assist affected political subdivisions in an effort
20 to respond to and recover from the outbreak.” *Id.* at 2.

21

22 49. The Governor also “order[ed] into active state service the
23 organized militia” to address the Covid-19 outbreak. *Id.*

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1 54. Specifically, the stay-home order expressly prohibited “faith-
2 based” events, demanding that “[a]ll people in Washington State shall
3 immediately cease participating in all public and private gatherings
4 and multi-person activities for social, spiritual and recreational
5 purposes, regardless of the number of people involved, except as
6 specifically identified here.” Ex. 3, § 2.
7

8
9 55. In addition, the stay-home order required “all non-essential
10 businesses in Washington State” to “cease operations except for
11 performing basic minimum operations.” *Id.*, § 3.
12

13
14 56. The stay-home order did not require “essential businesses”
15 to close, but rather “encourage[d]” them to “remain open and maintain
16 operations.” *Id.*
17

18 57. Under the stay-home order, individuals could only leave
19 their home or residence to conduct or participate in (1) “essential
20 activities,” or (2) “employment in providing essential business services.”
21 *Id.*, § 1.
22

23 58. The stay-home order defined “essential activities” as
24 obtaining necessary supplies or services, engaging in activities essential
25
26

1 for health and safety, caring for a friend or family member, or engaging
2 in outdoor exercise activities. *Id.*, § 1.a.
3

4 59. The stay-home order defined “employment in essential
5 business services” as “an essential employee performing work for an
6 essential business as identified in the ‘Essential Critical Infrastructure
7 Workers’ list.” *Id.*, § 1.b.
8

9 60. The Essential Critical Infrastructure Workers’ list,
10 comprising fourteen pages, identifies 158 classifications of workers and
11 businesses spanning thirteen broad sectors of the economy. *See*
12 Essential Critical Infrastructure Workers’ List, attached as **Exhibit 4**.
13
14

15 61. Although the stay-home order was first set to expire on April
16 6, it finally expired on May 31 after the Governor extended it three
17 times. *See* Proclamations 20-25.1, 20-25.2, and 20-25.3, attached as
18 **Exhibits 5, 6, 7**.
19

20 *The Original Reopening Plan*

21 62. On May 4, 2020, Governor Inslee signed Proclamation 20-
22 25.3, which allowed drive-in worship services but continued to prohibit
23 in-person services of any size. *See* Ex. 7, at 3, 4.
24
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1 63. Proclamation 20-25.3 also introduced and incorporated the
2 State’s original reopening plan: “Safe Start Washington: A Phased
3 Approach to Recovery.” *See* Ex. 7, at 3; *see also* Original Reopening
4 Plan, attached as **Exhibit 8**.
5

6 64. Under Phase 1 of the original reopening plan, in-person
7 church services of any size remained prohibited. Ex. 8, at 7.
8

9 65. Under Phase 2 of the original reopening plan, the original
10 reopening plan generally restricted gatherings to “no more than 5
11 people outside your household per week.” *Id.*
12

13 66. The original reopening plan provided that each phase would
14 last for at least three weeks, but that smaller counties could apply for a
15 variance to proceed through the phases more quickly. *Id.* at 6, 8-9.
16

17 67. On May 20, 2020, the Spokane Regional Health District
18 submitted a variance application containing statements from local
19 health officials and boards representing that Spokane County could
20 safely advance to Phase 2 because, among other things, the county had
21 relatively low rates of virus transmission and adequate health care
22 resources. *See* Spokane County Variance Application, attached as
23
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25
26 **Exhibit 9**.

1 68. On May 22, 2020, the Washington State Department of
2 Health granted the application, allowing Spokane County—the county
3 where Christ’s Church operates—to advance to Phase 2. *See* Spokane
4 County Variance, attached as **Exhibit 10**.

5
6 69. Similarly, on June 1, 2020, the Snohomish Health District
7 submitted a variance application containing statements from local
8 health officials and boards representing that Snohomish County could
9 safely advance to Phase 2 because, among other things, the county had
10 relatively low rates of virus transmission and adequate health care
11 resources. *See* Snohomish County Variance Application, attached as
12 **Exhibit 11**.

13
14 70. On June 5, 2020, the Washington State Department of
15 Health granted the application, allowing Snohomish County—the
16 county where Westgate operates—to advance to Phase 2. *See*
17 Snohomish County Variance, attached as **Exhibit 12**.

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22 ***The Church Gathering Ban***

23 71. On May 27, 2020, Governor Inslee issued guidance regarding
24 religious activity during Phases 1 and 2. *See* Initial Religious Guidance,
25 attached as **Exhibit 13**.

1 72. The Governor characterizes spiritual gatherings as “COVID-
2 19 ‘superspreader’ events” in the first sentence of his initial religious
3 guidance. Consistent with that characterization, he suggests that
4 worship services be held remotely or as drive-in services. *Id.* at 1.
5

6 73. On August 10, 2020, Governor Inslee issued revised
7 guidance regarding religious activity during Phases 1, 2, and 3. Revised
8 Religious Guidance, attached as **Exhibit 14**. The guidance provides
9 that, under Phase 2, indoor services are now limited to “25% capacity or
10 200 individuals, whichever is less.” *Id.*
11

12 74. Again, on October 21, 2020, Governor Inslee issued revised
13 guidance for religious activity during Phases 1, 2, and 3. Second Revised
14 Religious Guidance, attached as **Exhibit 15**.
15

16 75. The current religious guidance provides that, under Phase 2,
17 indoor services are limited to 25% capacity or 200 individuals,
18 whichever is less. *Id.* at 1.
19

20 76. The guidance also provides that, under Phase 2, additional
21 attendees are permitted to attend simultaneous services if the [church]
22 has . . . separate rooms,” provided that such rooms have their “own
23 outdoor entrance/exit, and bathrooms for all participants”. *Id.*
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1 *The Current Reopening Plan*

2 77. On July 24, 2020, Governor Inslee issued Proclamation 20-
3 25.7, which announced and incorporated a new county-by-county
4 reopening plan: “Safe Start Washington: Phased Reopening County-By-
5 County.” See Proclamation 20-25.7, attached as **Exhibit 16**, at 3.
6
7

8 78. Proclamation 20-25.7 extends the prohibitions in
9 Proclamations 20-25, 20-25.1, 20-25.2, and 20-25.3 until “the state of
10 emergency. . .is rescinded or until this order is amended or rescinded.”
11 Ex. 16, at 6.
12

13 79. With respect to religious services, Proclamation 20-25.7
14 provides that the Governor’s guidance “may be updated or modified as
15 the science and data support.” *Id.* at 4.
16
17

18 80. Thus, the Church Gathering Ban remains in effect under the
19 current reopening plan. *See id.*
20

21 81. On October 7, 2020, Governor Inslee updated the reopening
22 plan: “Safe Start Washington: Phased Reopening County-By-County.”
23 See Current Reopening Plan, attached as **Exhibit 17**.
24

25 82. The current reopening plan restricts various activities
26 during each of the four reopening phases and provides all counties—

1 regardless of size—an opportunity to apply for a variance to proceed to
2 later phases. *See Ex. 17, at 2.*

3
4 83. In Phase 1 of the current reopening plan, businesses and
5 operations designated as “essential” are “open” and permitted to operate
6 subject only to industry-specific guidance. *See id. at 9, 12.*

7
8 84. The current reopening plan creates a new, intermediate
9 phase called “Modified Phase 1.” *Id. at 9.*

10
11 85. Counties that are not ready to proceed from Phase 1 to
12 Phase 2 may still apply for unique Modified Phase 1 restrictions
13 tailored to their circumstances. *Id.*

14
15 86. Under Modified Phase 1, the current reopening plan
16 recommends a 25% capacity restriction for professional offices, real
17 estate operations, pet grooming businesses, and personal services such
18 as tattoo parlors, barber shops, hair salons, and nail salons. *See Ex. 17,*
19 *at 10.*

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21
22 87. Subject to industry-specific guidance, “non-essential”
23 operations may resume in Phase 2 counties for restaurants and taverns,
24 office-based businesses, manufacturing facilities, retail stores, movie
25

1 theatres, real estate businesses, and personal services such as tattoo
2 parlors, barbershops, hair salons, and nail salons. Ex. 17, at 12.

3
4 ***Secular Exceptions to the Gathering Bans***

5 88. As noted, there are many secular exceptions to the
6 Governor’s gathering restrictions, including “essential” activities, “non-
7 essential” activities, and protest gatherings.
8

9 89. The Governor’s gathering restrictions do not apply to a wide
10 range of businesses and activities identified in the State’s fourteen-
11 page-long “Essential Workers” list, including:
12

- 13 • Cannabis retailers;
- 14 • Brewery and wine-making facilities;
- 15 • Coffee-production facilities;
- 16 • Company cafeterias;
- 17 • “Big box stores” that also sell groceries;
- 18 • Union operations;
- 19 • Airports;
- 20 • Subways and metros; and
- 21 • Radio, television, newspaper, and media operations.

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26 *See* Ex. 4, at 1-12.

1 90. Even in counties under Modified Phase 1, the current
2 reopening plan recommends a 25% capacity restriction with no
3 numerical cap for professional offices, real estate operations, pet
4 grooming businesses, and personal services such as tattoo parlors,
5 barber shops, hair salons, and nail salons. *See* Ex. 17, at 10.
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7

8 91. Under Phase 2, even “non-essential” operations are
9 exempted from the gathering restrictions or granted more lenient
10 treatment than houses of worship, even if they involve large groups of
11 people gathering in close proximity for extended periods of time. *See* Ex.
12 17, at 12.
13
14

15 92. Under Phase 2, subject to industry-specific guidance,
16 operations may resume for restaurants and taverns, office-based
17 businesses, manufacturing facilities, retail stores, movie theaters, real
18 estate businesses, pet grooming businesses, and personal services
19 including tattoo parlors, barbershops, and hair or nail salons. *See* Ex.
20 17, at 12.
21
22

23 93. Manufacturing facilities in Phase 2 counties are permitted to
24 resume operations with no capacity or numerical restrictions, subject
25 only to social distancing and hygiene protocols. *See* Ex. 17, at 12; *see*
26

1 *also* Industry-Specific Guidance for Manufacturing Facilities, attached
2 as **Exhibit 18**.

3
4 94. Restaurants and taverns in Phase 2 counties may resume
5 indoor dining consistent with social distancing and hygiene
6 requirements and may reach 50% of capacity with no numerical cap, so
7 long as there are only 6 people per table (who may be from different
8 households) and no bar seating. *See* Ex. 17 at 12; *see also* Industry-
9 Specific Guidance for Restaurants and Taverns, attached as **Exhibit**
10 **19**, at 1.

11
12
13 95. Professional offices in Phase 2 counties may resume
14 operations consistent with social distancing and hygiene requirements,
15 and may reach 50% capacity with no numerical cap. *See* Ex. 17, at 12;
16 *see also* Industry-Specific Guidance for Professional Offices, attached as
17 **Exhibit 20**, at 3.

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19
20 96. In Phase 2 counties, businesses offering personal services—
21 including tattoo parlors, barbershops, and hair or nail salons—may
22 reach 50% capacity with no numerical restriction. *See* Ex. 17, at 12; *see*
23 *also* Industry-Specific Guidance for Personal Services, attached as
24 **Exhibit 21**, at 2-3.
25
26

1 97. In Phase 2 counties, movie theaters may reach 25% capacity
2 with no numerical restriction. *See* Ex. 17, at 12; *see also* Industry-
3 Specific Guidance for Movie Theaters, attached as **Exhibit 22**, at 1.
4

5 98. In Phase 2 counties, large gatherings are permitted at
6 miscellaneous venues for conventions, conferences, business meetings,
7 training, and testing, provided that they do not exceed 30% capacity or
8 200 people. Miscellaneous Venue Guidance, attached as **Exhibit 23**.
9
10

11 99. The Governor has allowed restaurants and taverns,
12 manufacturing facilities, office-based businesses, retail establishments,
13 movie theaters, tattoo parlors, nail care salons, hair salons, and barber
14 shops to reopen with no flat numerical restriction. In contrast, the
15 Churches and other houses of worship are limited to 200 people
16 regardless of their physical capacity.
17
18

19 100. The State has also granted de facto gathering exemptions for
20 protest gatherings. Following the tragic killing of George Floyd on May
21 25, 2020, thousands of Washingtonians gathered for protests,
22 demonstrations, and vigils. The Seattle Times described these protests
23 as “seas” of people “gathering” to “listen to speeches,” with photos
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1 showing protestors failing to comply with the State’s gathering limits
2 and social distancing protocols¹:
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14 101. The Washington State Department of Health acknowledged
15 that the protest gatherings posed public health risks but encouraged
16 the gatherings anyway. The Department of Health published a blog
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19 ¹ See Seattle Times Staff, *Seattle-area protests: Police declare a riot as*
20 *demonstrators gather for fourth day to call for police accountability*, THE
21 SEATTLE TIMES (updated June 3, 2020),

22 [https://www.seattletimes.com/seattle-news/george-floyd-protests-](https://www.seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/)
23 [continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-](https://www.seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/)
24 [day-to-call-for-racial-justice/](https://www.seattletimes.com/seattle-news/george-floyd-protests-continue-in-seattle-area-demonstrators-expected-to-gather-for-fourth-day-to-call-for-racial-justice/).
25
26

1 post entitled “Risking your health to fight racism (Thank you!),” which
2 stated, “If you were one of many people in communities across our state
3 who responded to this violent act with outrage, frustration, and
4 peaceful protest, thank you!”²

5
6
7 102. Governor Inslee also expressed full support of the protest
8 gatherings. On May 31, 2020, Governor Inslee acknowledged that
9 “[t]housands were protesting peacefully,” and “I want to thank the
10 protesters who carried a peaceful and important message.” May 31,
11 2020 Inslee Statement, attached as **Exhibit 24**. In another statement,
12 Governor Inslee affirmed that “I fully support the right to free speech
13 and peaceful assembly,” and “[a]s people gather today to protest the
14 unjust death of George Floyd, I hope they do so peacefully and safely.”
15 May 30, 2020 Inslee Statement, attached as **Exhibit 25**.

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19 103. During a press conference on June 1, 2020, Governor Inslee
20 encouraged protesters “to be safe for themselves and the people around
21

22
23 ² Risking your health to fight racism (Thank you!), *Medium* (Jun. 2,
24 2020), [https://medium.com/wadepthealth/risking-your-health-to-fight-](https://medium.com/wadepthealth/risking-your-health-to-fight-racism-thank-you-7a528a692f81)
25 [racism-thank-you-7a528a692f81](https://medium.com/wadepthealth/risking-your-health-to-fight-racism-thank-you-7a528a692f81).
26

1 them,” expressing his mere “hope” that protestors might wear a mask
2 and “distance *as much as you can.*”³
3

4 104. In a press conference on June 4, 2020, Governor Inslee
5 stated that, for protestors, “there are some First Amendment rights
6 that we have respected even though we do understand there have been
7 some increased risks in any large gathering and we have respected
8 people’s rights in that regard”⁴
9

10
11 105. In a press conference on June 8, 2020, Governor Inslee
12 acknowledged that supporting protest gatherings while prohibiting
13 other gatherings does “appear to be contradictory,” but that “thousands
14 of people have made a decision that the virus of racism is important
15
16
17

18
19 ³ Governor Jay Inslee, Address Regarding Demonstrations,
20 <https://www.pscp.tv/w/1OyJAYjMnBgJb> (June 1, 2020) (emphasis
21 added).
22

23 ⁴ Governor Jay Inslee, Press Conference on Covid-19 (June 4, 2020),
24 <https://www.tvw.org/watch/?clientID=9375922947&eventID=202006105>
25

26 3

1 enough to fight back by peaceful protests and we have encouraged them
2 to do so in the most distanced manner as possible”⁵
3

4 106. Meanwhile, the Churches—who also have First Amendment
5 rights—would be subject to criminal penalties if they made an identical
6 decision that the virus of sin (including racism) is important enough to
7 fight back by peacefully gathering for religious services. Indeed, even
8 outdoor church services are limited to 200 people.
9

10
11 107. Thus, the Churches may not hold their planned indoor
12 services without subjecting themselves to criminal penalties, even
13 though they would adhere to strict social distancing and hygiene
14 protocols and would not exceed 50% of their respective capacities. As
15 applied to Westgate, the Church Gathering Ban restricts their services
16 to 11.7% capacity (200 people for a church with 1700 capacity).
17
18

19 108. The Governor’s Church Gathering Ban has harmed the
20 Churches’ ministries by suspending weddings, baptisms, services for
21

22
23 ⁵ Governor Jay Inslee, Press Conference on Covid-19 (June 8, 2020),
24 <https://www.tvw.org/watch/?clientID=9375922947&eventID=202006112>
25

1 vulnerable populations, membership vows, support for youth, and
2 church leadership meetings.
3

4 109. There are many considerations that render outdoor services
5 impracticable for the Churches. For example, inclement weather could
6 significantly reduce attendance or impede outdoor services altogether.
7
8 The Churches lack the equipment necessary to successfully broadcast a
9 drive-in service. Noise from street traffic could disturb outdoor services.
10
11 Attendees with reduced mobility, including attendees who use
12 wheelchairs or walkers, will have trouble safely traversing grassy areas
13 where an outdoor service could occur.
14

15 ***Defendants' Credible Threats and Actions to enforce the***
16 ***COVID- 19 executive Orders and Guidance***

17 110. Plaintiffs have a reasonable fear of violating the Church
18 Gathering Ban because Defendants have issued credible threats of
19 enforcement and have taken action against others for violating the
20 orders.
21

22
23 111. On May 19, 2020, Attorney General Ferguson sued a
24 business owner for violating the Stay Home – Stay Healthy
25
26

1 proclamation.⁶

2
3 **LEGAL ALLEGATIONS**

4 112. At all times relevant to this Complaint, each and all the acts
5 and policies alleged here were attributable to the Defendants who acted
6 and are acting under color of a statute, regulation, custom, or usage of
7 the State of Washington.
8

9 113. The Churches have no adequate or speedy remedy at law to
10 correct or redress the deprivation of their rights by Defendants.
11

12 114. Defendants' actions and policies do not serve any legitimate
13 or compelling state interest and are not narrowly tailored to serve any
14 such interests.
15

16 115. Defendants have deprived, and continue to deprive, the
17 Churches of their clearly established rights under the United States
18 Constitution, as pleaded below.
19

20 116. Without declaratory and injunctive relief, the Churches'
21 religious exercise will continue to be chilled and the Churches will
22

23
24 _____
25 ⁶ *State v. Power Alley Fitness, Inc.*, Sno. Cty. Sup Ct. Cause No. 20-2-
26 02973-31.

1 continue to suffer violations of their constitutional rights and
2 irreparable harm.

3
4 **COUNT I**

5 **Violation of the First Amendment to the U.S. Constitution**

6
7 **(Free Exercise)**

8 117. The Churches incorporate by reference paragraphs 1
9 through 116.

10
11 118. The Churches' sincerely held religious beliefs teach that the
12 Bible is the inspired word of God and the sole authority for faith and
13 practice.

14
15 119. The Churches sincerely believe that the Bible teaches the
16 necessity of gathering together for corporate prayer, worship, and
17 fellowship and that such assembly is necessary and good for the
18 Churches and their members' spiritual growth.

19
20 120. The Governor's Church Gathering Ban substantially
21 burdens the Churches' religion by prohibiting them from holding in-
22 person church services exceeding the lesser of 200 people or 25% of the
23 Churches' respective capacities.
24
25
26

1 121. The Governor’s Church Gathering Ban interferes with the
2 Churches’ religious autonomy and ability to carry out its religious
3 doctrine, faith, and mission.
4

5 122. The Governor’s Church Gathering Ban targets,
6 discriminates against, and shows hostility towards houses of worship,
7 including the Churches.
8

9 123. The Governor’s Church Gathering Ban is neither neutral nor
10 generally applicable because it is riddled with exceptions and is based
11 on a system of individualized assessments.
12

13 124. Defendants do not have a compelling reason for prohibiting
14 the Churches’ indoor church services when attendees can practice
15 adequate social distancing, especially when compared to the many
16 secular activities exempted under the Governor’s orders.
17

18 125. Defendants have not selected the least restrictive means to
19 further any purported interest.
20

21 126. The Church Gathering Ban violates the Free Exercise
22 Clause of the First Amendment to the United States Constitution, both
23 facially and as applied.
24
25
26

1 127. Without declaratory and injunctive relief, the Churches will
2 be irreparably harmed.
3

4 **COUNT II**

5 **Violation of the First Amendment to the U.S. Constitution**

6 **(Right to Assemble)**
7

8 128. The Churches incorporate by reference paragraphs 1
9 through 116.
10

11 129. The First Amendment prohibits Defendants from violating
12 the Churches' right to peaceably assemble.
13

14 130. The Governor's Church Gathering Ban violates the
15 Churches' right to peaceably assemble because the ban on in-person
16 services does not serve any legitimate, rational, substantial, or
17 compelling governmental interest, especially when viewed in light of the
18 many secular activities exempted under the Governor's orders.
19

20 131. Defendants have alternative, less restrictive means to
21 achieve any interest that they might have.
22

23 132. The Church Gathering Ban violates the right to assemble
24 under the First Amendment to the United States Constitution, both
25 facially and as applied.
26

1 133. Without declaratory and injunctive relief, the Churches will
2 be irreparably harmed.

3
4 **COUNT III**

5 **Violation of the First Amendment to the U.S. Constitution**

6
7 **(Free Speech)**

8 134. The Churches incorporate by reference paragraphs 1
9 through 116.

10
11 135. The Governor's Church Gathering Ban violates the
12 Churches' freedom of speech by prohibiting them from engaging in
13 religious speech through their church services, which occur exclusively
14 on private property.
15

16 136. The Governor's Church Gathering Ban specifically targets
17 meetings of up to 200 people or 25% of capacity held for the purpose of
18 religious expression, while permitting meetings of the same or greater
19 size for secular purposes.
20

21
22 137. The Governor's Church Gathering Ban is thus content and
23 viewpoint-based in violation of the First Amendment.
24

25 138. The Governor's Church Gathering Ban gives governmental
26 officials unbridled discretion over enforcement of the order and the

1 imposition of any penalty, making the order susceptible to both content
2 and viewpoint-based discrimination.
3

4 139. Prohibiting or punishing the Churches' religious speech does
5 not serve any legitimate, rational, substantial, or compelling
6 governmental interest.
7

8 140. The State also has alternative, less restrictive means to
9 achieve any interest that it might have.
10

11 141. The Church Gathering Ban violates the Free Speech Clause
12 of the First Amendment to the United States Constitution, both facially
13 and as applied.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the Churches respectfully request that the Court:
17

18 a. Enter a temporary restraining order, preliminary injunction,
19 and permanent injunction prohibiting Defendants from enforcing those
20 portions of the Governor's orders that limit indoor church services to
21 200 or fewer persons or 25% of capacity during Phase 2 of the
22 Governor's reopening plan, and that limit in-person church services to
23 400 or fewer persons of 50% capacity during Phase 3 of the Governor's
24 reopening plan, thereby allowing the Churches and their congregants to
25
26

1 resume corporate prayer and worship while following adequate social
2 distancing and public health guidelines.
3

4 b. Enter a judgment declaring that those portions of the
5 Governor's orders that limit in-person church services to 200 or fewer
6 persons or 25% capacity during Phase 2 of the Governor's reopening
7 plan, and that limit in-person church services to 400 or fewer persons or
8 50% capacity during Phase 3 of the Governor's reopening plan, violate
9 the U.S. Constitution's Free Exercise, Right to Assemble, and Free
10 Speech Clauses, both facially and as-applied;
11
12

13 c. Award the Churches nominal damages for Defendant's
14 violation of the Churches' constitutional rights;
15

16 d. Award the Churches court costs and reasonable attorney's
17 fees; and
18

19 e. Award such other and further relief as to which the
20 Churches may be entitled.
21
22
23
24
25
26

1 Respectfully submitted this 30th day of October 2020.

2
3 s/ Ryan J. Tucker

4 Kristen K. Waggoner, WA Bar 27790

5 Ryan J. Tucker, AZ Bar 034382*

6 Jeremiah Galus, AZ Bar 030469*

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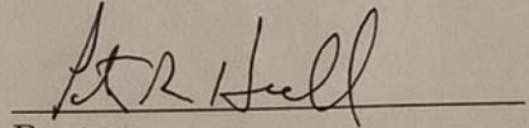
20 dcortman@adflegal.org

21 *Admitted *pro hac vice*

VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint has been examined by me and that the factual allegations therein are true to the best of my knowledge, information, and belief.

Dated: October 30, 2020

A handwritten signature in black ink, appearing to read "A. R. Hull", is written over a horizontal line.

Pastor _____

Christ's Church of Mt. Spokane

VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint has been examined by me and that the factual allegations therein are true to the best of my knowledge, information, and belief.

Dated: October 30, 2020

Pastor 

Westgate Chapel

SECOND AMENDED VERIFIED COMPLAINT – 1

1 **Certificate of Service**

2 I hereby certify that on the 30th day of October, 2020, the
3 foregoing was filed with the Clerk of Court using CM/ECF system,
4 which in turn automatically generated a Notice of Electronic Filing to
5 all parties in the case who are registered users of the CM/ECF system.

6 s/ Ryan J. Tucker
7 Ryan J. Tucker, AZ Bar 034382*
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