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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ZACH MILLER, JEFFREY NELSON, MICHAEL JELLISON,
AND ALICIA MUNRO,

Petitioners,

v.

JAY INSLEE, GOVERNOR OF THE STATE OF WASHINGTON,

Respondent.

PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION

A dark fear has overcome many Washingtonians as they watch their businesses, their finances, their families, and even their health disappear. People are suffering. The lives of small business owners and their employees are being shattered. These people need justice right now. Every day that passes, people are becoming more desperate, not as a result of a virus, but because of what their governor is doing. This court must step in.

Emergencies which rise to constitutional questions have been addressed by the people of this state in the Constitution of the state of Washington. Specifically, Article II, Section 42 states as follows:

Article II Section 42 SECTION 42 GOVERNMENTAL CONTINUITY DURING EMERGENCY PERIODS. **The legislature**, in order to insure continuity of state and local governmental operations in periods of emergency resulting from enemy attack, **shall have the power and the duty**, immediately upon and after adoption of this amendment, to enact legislation providing for prompt and temporary succession to the powers and duties of public offices of whatever nature and whether filled by election or appointment, the incumbents and legal successors of which may become unavailable for carrying on the powers and duties of such offices; **the legislature shall likewise enact such other measures as may be necessary and proper for insuring the continuity of governmental operations during such emergencies. Legislation enacted under the powers conferred by this amendment shall in all respects conform to the remainder of the Constitution:** Provided, That if, in the judgment of the legislature at the time of disaster, conformance to the provisions of the Constitution would be impracticable or would admit of undue delay, such **legislation may depart during the**

period of emergency caused by enemy attack only, from the following sections of the Constitution: Article 14, Sections 1 and 2, *Seat of Government*; Article 2, Sections 8, 15 (Amendments 13 and 32), and 22, *Membership, Quorum of Legislature and Passage of Bills*; Article 3, Section 10 (Amendment 6), *Succession to Governorship*: Provided, That the legislature shall not depart from Section 10, Article III, as amended by Amendment 6, of the state Constitution relating to the Governor's office so long as any successor therein named is available and capable of assuming the powers and duties of such office as therein prescribed; Article 3, Section 13, *Vacancies in State Offices*; Article 11, Section 6, *Vacancies in County Offices*; Article 11, Section 2, *Seat of County Government*; Article 3, Section 24, *State Records*. [AMENDMENT 39, 1961 House Joint Resolution No. 9, p 2758. Approved November 1962.]

The only remaining power conferred on the governor during an emergency is found in Article VIII, Section 12(i):

If the governor declares a state of emergency resulting from a catastrophic event that necessitates government action to protect life or public safety, then for that fiscal year moneys may be withdrawn and appropriated from the budget stabilization account, via separate legislation setting forth the nature of the emergency and containing an appropriation limited to the above-authorized purposes as contained in the declaration, by a favorable vote of a majority of the members elected to each house of the legislature.

Yet, on February 29, 2020, Jay Inslee set forth Proclamation 20-05 in respect of COVID-19, and proclaimed an emergency in all counties in the state of Washington pursuant to Chapters 38.08, 38.52 and 43.06 RCW, and directed the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented.

On March 23, 2020, Jay Inslee set forth Proclamation 20-05 and imposed a Stay Home – Stay Healthy Order throughout Washington State, which issued an edict “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.”

PARTIES

A. PETITIONERS ARE ALL BUSINESS OWNERS DEEMED NON-ESSENTIAL BY INSLEE’S PROCLAMATION 20-25

Petitioners are business owners who own businesses in the state of Washington which were fully functioning operations on the day of Jay Inslee’s Proclamation 20-25, whose businesses were summarily closed by the force of the Proclamations. None of the Petitioners received any prior notice, any hearing, or any opportunity to present witnesses on their behalf, or to make any argument that in fact their businesses were essential. Appendix B: Declarations of Petitioners

B. JAY INSLEE IS A STATE OFFICER SUBJECT TO MANDAMUS

Jay Inslee is a state officer holding the position of governor of the state of Washington who issued the “Stay Safe – Stay Home” order under the color of state law.

STANDARD OF REVIEW ON MANDAMUS.

Article IV, Section 4 of Washington's Constitution provides that the supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and . . . shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Art. IV, Sec. 4, Wash. Const.

The grounds for granting a writ are described in RCW 7.16.160, which may be issued by the court "to compel the performance of an act which the law especially enjoins as a duty resulting from an office".

RCW 7.16.170 provides that the "writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested." See Appendix B, Affidavits of Petitioners.

An individual has standing to bring an action for mandamus, and is therefore considered to be beneficially interested, if he has an interest in the action beyond that shared in common with other citizens. *RPEC v. Charles*, 62 P. 3d 470, 478 (2003), citing *State ex rel. Lay v. Simpson*, 173 Wash. 512, 513, 23 P.2d 886 (1933).

Mandamus is an extraordinary writ. *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P. 2d 920 (1994). Original jurisdiction to issue a writ is both

nonexclusive and discretionary. *Department of Ecology v. State Fin. Comm.*, 116 Wn.2d 246, 804 P.2d 1241 (1991).

Writs are not directed at a general course of conduct. *Walker v. Munro, supra, citing In State ex rel. Taylor v. Lawler*, 2 Wn.2d 488, 490, 98 P.2d 658 (1940).

The remedy of mandamus contemplates the necessity of indicating the precise thing to be done. *Walker v. Munro, supra, citing Clark Cy. Sheriff v. Department of Social & Health Servs.*, 95 Wn.2d 445, 450, 626 P.2d 6 (1981) (*citing State ex rel. Hawes v. Brewer*, 39 Wash. 65, 80 P. 1001 (1905)). *In State ex rel. Pacific Am. Fisheries v. Darwin*, 81 Wash. 1, 12, 142 P. 441 (1914) (*citing State ex rel. Hawes v. Brewer*, 39 Wash. 65, 67-69, 80 P. 1001 (1905)).

The courts will not issue a writ in anticipation of a supposed omission of a duty, or unless the duty exists at the time the writ is sought. The duty to be enforced by mandamus must be one which exists at the time when the application for the writ is made. The writ will not issue in anticipation of a supposed omission of duty, but it must appear that there has been an actual default in the performance of a clear legal duty then due at the hands of the party against whom relief is sought. Until the time fixed for the performance of the duty has passed, there can be no default

of duty. *Walker v. Munro, supra, citing State ex rel. Hamilton v. Cohn*, 1 Wn.2d 54, 58-59, 95 P.2d 38 (1939).

Mandamus may not be used to compel the performance of acts or duties which involve discretion on the part of a public official. *Vangor v. Munro*, 115 Wn.2d 536, 543, 798 P.2d 1151 (1990); *State ex rel. Pacific Bridge Co. v. State Toll Bridge Auth.*, 8 Wn.2d 337, 342-43, 112 P.2d 135 (1941).

STATEMENT OF THE CASE

On February 19, 2020, a resident of a Life Care Centers of America nursing home in Kirkland, an Eastside King County suburb of Seattle, was transferred to a local hospital and later tested positive for COVID-19. Oxley, Dyer; Ryan, John (March 7, 2020). *Volatile and unpredictable: Life Care Center speaks publicly for the first time since COVID-19 outbreak*. KUOW.

On February 24, a 54-year-old man was transferred from the Life Care Center of Kirkland to Harborview Medical Center and died there on February 26. Also, on the 26th, a woman in her 80s from the center died at her family home. Both were found to have had COVID-19 and in one case this was discovered in post-mortem testing. Sullivan, Olivia (March 3, 2020). *Coronavirus death toll rises to nine in Washington*. Kirkland Reporter. The two deaths were announced on March 3. *Public Health*

confirms seven new COVID-19 cases, bringing overall total to 21.

kingcounty.gov. King County. March 3, 2020.

On February 28, a high school student at Henry M. Jackson High School in Mill Creek, Washington was confirmed as having the virus causing the school to be closed immediately; Mariner High School in Everett was also closed because a student's parent had the virus. *Mariner High School closure related to coronavirus death.* HeraldNet.com. March 3, 2020.

The following day, researchers confirmed the coronavirus strain in the student's case may be related to the coronavirus strain in the first confirmed U.S. case from January 19, suggesting that the virus may have been spreading in the area for up to six weeks. Achenbach, Joel; Mettler, Katie; Sun, Lena H.; Guarino, Ben (March 2, 2020). *Coronavirus may have spread undetected for weeks in Washington state, which reported first two deaths in U.S.* The Washington Post. *Coronavirus Live Updates: New Fears Over Virus's Spread in Washington State.* The New York Times. March 1, 2020.

Also on February 28, a woman in her 50s who had recently returned from South Korea and who was an employee of the United States Postal Service at its Network Distribution Center facility in Federal Way, King County, tested positive. Salo, Jackie (March 1, 2020). *USPS worker*

tests positive for coronavirus in Seattle area. The New York Post.

Archived from the original on March 2, 2020. Miller, Madison; Chastaine, Danielle; Sullivan, Olivia (March 1, 2020). *Coronavirus reaches Federal Way as USPS employee tests positive.* The Federal Way Mirror. March 2, 2020.

On February 29, Washington health officials made the first announcement of a death from COVID-19 in the United States. A man in his late 50s with pre-existing chronic illness died at Evergreen Health's hospital in Kirkland. He was not associated with the Life Care Center and although patients from the center were also in the hospital, it was not believed that any patients contracted the virus at the hospital. Officials said there was no evidence he contracted the virus through travel, and they suspected community spread of the disease in King County. Acevedo, Nicole; Burke, Minyvonne (March 1, 2020). *Washington state man becomes first U.S. death from coronavirus.* NBC News. Acevedo, Nicole (February 29, 2020). *First coronavirus death in the U.S. happens in Washington state.* NBC News. The man had not been tested for the virus until February 28, partly because the lab in Washington was not ready to conduct tests, and partly because until late February the CDC had been recommending testing only for those with COVID-19 symptoms who had

recently traveled to China. Ghose, Tia (February 29, 2020). *1st US death from COVID-19 reported in Washington state*. Live Science.

Future US. Public health officials also reported two confirmed cases in the Life Care Center nursing home, including a woman in her 40s who was a health care worker at the facility. Lesniewski, Niels; Krawzak, Paul M. (February 29, 2020). *Coronavirus response efforts ramp up as first U.S. death confirmed*. Roll Call.

Governor Inslee, based on two deaths, then declared an emergency of enough size and scope to impose the draconian measures of RCW 38.08, 38.52, and 43.06.010. Since then, the state has seen an increase in unemployment of 900,000 persons. Employment Security Department, Washington State, Monthly Employment Report, MERS Charts and Tables, 2020, <https://esd.wa.gov/labormarketinfo/monthly-employment-report>.

On March 9, Governor Inslee announced new rules—including mandatory screening for visitors and staff—for nursing homes to slow the spread of the virus. The state was also considering mandatory measures of social distancing to prevent spread. KIRO 7 News Staff (March 9, 2020). *Coronavirus: Inslee announces new rules for nursing homes, assisted living facilities*. KIRO. The governor's office announced that workers who have reduced hours or temporary unemployment due to the outbreak

are eligible for unemployment benefits. Zdanowicz, Christina. *Restaurants struggle to survive as coronavirus turns Seattle into a ghost town*. CNN.

On March 11, Governor Inslee invoked emergency powers and banned "social, spiritual, and recreational gatherings" of over 250 people in King, Snohomish and Pierce Counties (including the core of the Seattle metropolitan area) for at least the month of March. *Washington Gov. Jay Inslee bans large gatherings in Seattle area, including sporting events*. ESPN. March 11, 2020. Brazile, Liz (March 11, 2020). *Large events banned in Seattle area amid efforts to slow COVID-19 spread*. KUOW. The order included provisions for its enforcement by the Washington Military Department. Appendix A - Proclamation 20-07.

On March 12, Inslee announced closures for all public and private K-12 schools in King, Snohomish, and Pierce Counties beginning from March 17 through at least April 24. "Inslee announces school closures in King, Snohomish and Pierce counties". Later, on March 13, Inslee announced K-12 closures until at least April 24 throughout the state. "Inslee announces statewide school closures, expansion of limits on large gatherings". Official website. Governor Jay Inslee. March 14, 2020. Appendix A: Executive Order 20-29.

On March 15, Inslee announced the closing of all sit-down restaurants statewide, noting that "very strong measures are necessary to

slow the spread of the disease". Restaurants are still allowed to offer takeout and drive through options. Schnell, Lindsay, *California, Ohio, Illinois, Massachusetts and Washington close bars and restaurants in effort to slow coronavirus*. USA Today. *LIST: States that have closed restaurants and bars to dine-in customers*. WTTV CBS4Indy. March 15, 2020.

The governor also announced that he would issue an emergency proclamation ordering all entertainment and recreation facilities to temporarily close. La Corte, Rachel (March 15, 2020). *Inslee to order all bars/restaurants to close to fight virus*. Associated Press. The same order banned gatherings of groups of 50 or more statewide. *Washington state to shut down restaurants, bars, and cap gatherings at 50 to stop spread of coronavirus*. The Seattle Times. March 15, 2020

Governor Inslee announced a statewide stay-at-home order on March 23, to last at least two weeks. Appendix A: Executive Order 20-25. Rachel La Corte (March 23, 2020). *Washington governor issues two-week stay-at-home order*. Associated Press.

The Governor called up the Washington National Guard on March 31. Until then, "only a few" activated Guardsmen had been deployed to the State Emergency Operations Center. Keith Eldridge (March 31, 2020).

Washington National Guard called up to help with COVID-19 response.
KOMO-TV.

On April 2, Governor Inslee announced that the stay at home order would be extended through at least May 4. Appendix A: Executive Order 20-25.1. *Gov. Inslee extends Washington state's coronavirus stay-home order through May 4.* The Seattle Times. April 2, 2020.

On May 1, Governor Inslee announced an extension to Washington's stay-at-home order through May 31 and revealed a 4-phase plan to reopening the state. Inslee made the announcements during a press conference Friday afternoon in Olympia. "I would like to tell you that you can make reservations for June 1, but I can't," Inslee said. "We will have to monitor, assess and adapt." Q-13 Staff, *Inslee extends stay-at-home order through May 31; reveals 4-phase plan to reopen Washington,* May 1, 2020. Q13 Fox.

On May 4, Inslee proclaimed under Chapters 38.08, 38.52 and 43.06 RCW, that "a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, 20-25.1 and 20-25.2 (Stay Home – Stay Healthy) are amended to extend all of the prohibitions and each

expiration date therein to May 31, 2020, except for those prohibitions regarding the specific activities listed below. All other provisions of Proclamations 20-25, 20-25.1, 20-25.2 shall remain in full force and effect. See Appendix A – Executive Order 20-25.3.

ARGUMENT

Jay Inslee is the Governor of the State of Washington, residing in Thurston County, Washington, whose authority is expressly set forth and expressly limited in the Constitution of the State of Washington, and an individual who took an oath to perform the office of Governor of the state of Washington, pursuant to RCW 43.01.020, swearing the following oath: “I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the state of Washington, and that I will faithfully discharge the duties of the office of (name of office) to the best of my ability.”

Jay Inslee, in suspending the liberty interests of Petitioners as described herein, has abolished the constitutional state of Washington, and has erected in its place an unacceptable tyranny in violation of his oath of office and in breach of the duty owed to Petitioners.

On March 23, 2020, Jay Inslee set forth Proclamation 20-05 and imposed a Stay Home – Stay Healthy Order throughout Washington State, which issued an edict “prohibiting all people in Washington State from

leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.”

Such an order egregiously affronts the Constitution of the state of Washington, suspending for an indefinite period:

- Rights protected under the Constitution of the United States in violation of Article I, Section 2 of the Washington Constitution.
- The liberty and property interests of all Washingtonians, without due process of law in violation of Article I, Section 3 of the Washington Constitution.
- The right of petition and of the people peaceably to assemble for the common good in violation of Article I, Section 4 of the Washington Constitution.
- The right to not be molested or disturbed in person or property on account of religion in violation of Article I, Section 11 of the Washington Constitution.
- The livelihoods and businesses which have been deemed “nonessential” by the Proclamations in violation of the equal protection of Article 1, Section 12, while granting

special privileges and immunities to a class of citizens he has arbitrarily and capriciously deemed essential, also in violation of Article I, Section 12.

- Depriving Washingtonians of the privilege of the writ of habeas corpus by suspending the same when no rebellion or invasion is present in violation of Article I, Section 13.

See Appendix A. Inslee's Covid-19 Proclamations.

Further, Jay Inslee has exceeded the authority expressed in the statutes upon which he relies to so act.

RCW 38.08 is violative of the Constitution of the state of Washington and the Constitution of the United States, in so much as RCW 38.08.030 provides that "Limited military law" is a partial subordination of civil authority by the setting up of an additional police power vested in the military force which shall have **the right to try all persons apprehended by it in such area by a military tribunal** or turn such offender over to civil authorities within five days for further action, during which time **the writ of habeas corpus shall be suspended in behalf of such person.**

No constitutional authority exists which allows the governor to exercise such authority in violation of the provisions of Article I of the

Constitution of the state of Washington. In fact, Article II, Section 42 specifically disallows the governor from so acting.

RCW 43.06.220 does not allow Inslee to prohibit all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business

Under this statute, the governor's reach cannot exceed the imposition of a curfew preventing people from being on the public streets, or in the public parks, or at any other public place during the hours of curfew. Yet RCW 43.06.220(1)(b) violates Article I, Section 4 of Washington's Constitution, as Article I, Section 4 specifies that "[t]he right of petition and of the people peaceably to assemble for the common good **shall never** be abridged". [Bold added].

RCW 43.06.220(1) allows for the taking of fundamental liberty interests of Washingtonians, including the right to buy any commodity or good as the governor deems fit, in violation of Article I, Section 3, which prevents the taking of liberty and property without due process.

No constitutional authority exists which allows the governor to exercise such authority in violation of the provisions of Article I of the Constitution of the state of Washington. In fact, Article II, Section 42

specifically disallows the governor from exercising the following provisions of RCW 43.06.220(1):

(b) Any number of persons, as designated by the governor, from assembling or gathering on the public streets, parks, or other open areas of this state, either public or private;

(e) The sale, purchase or dispensing of alcoholic beverages;

(f) The sale, purchase or dispensing of other commodities or goods, as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

(h) Such other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace.

All such actions violate the due process rights of Washingtonians protected under Article I, Section 3 of the Washington Constitution.

The governor claims authority pursuant to RCW 38.52. Yet, RCW 38.52.010 (2)(a) provides that a "catastrophic incident" means any natural or human-caused incident, including terrorism and enemy attack, that results in **extraordinary levels of mass casualties**, damage, or disruption severely affecting the population, infrastructure, environment, economy, or government functions. Inslee declared an emergency with only two

deaths which were consistent with the average number of deaths in Washington.

RCW 38.52.010 (2)(b) provides that a "catastrophic incident" does not include an event resulting from individuals exercising their rights, under the first amendment, of freedom of speech, and of the people to peaceably assemble, yet the governor has suspended such rights by his "Stay Safe – Stay Healthy" order.

RCW 38.52.010 (9)(a) provides that an "[e]mergency or disaster" as used in all sections of this chapter except RCW 38.52.430 means an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences; or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

The state of emergency upon which Inslee relied to declare an emergency under this statute on February 29, 2020, was the incidence of 66 cases presumed to be COVID-19 in the United States, and the Washington State Department of Health confirming localized person-to-person spread of COVID-19 in Washington State, significantly increasing *the risk of exposure and infection* [italics added] to Washington State's general public and creating an extreme public health risk that *may* [italics

added] spread quickly. At the time there were two deaths attributed to COVID-19 in the state of Washington.

The governor, by invoking RCW 38.08, has suspended the privilege of habeas corpus. Article I, Section 13 of Washington's Constitution provides that "[t]he privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it."

Article I, Section 9(2) of the United States Constitution provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Black's Law Dictionary defines "rebellion" as the "[d]eliberate, organized resistance, by force and arms, to the laws or operations of the government, committed by a subject. *Hubbard v. Harnden Exp. Co.*, 10 R. I. 247; *State v. McDonald*, 4 Port. (Ala.) 455; *Crashley v. Press Pub. Co.*, 74 App. Div. 118, 77 N. Y. Supp. 711.

Black's Law Dictionary defines "invasion" as "the incursion of an army for conquest or plunder." *Etna Ins. Co. v. Boon*, 95 U. S. 129, 24 L. Ed. 395.

There is no rebellion or invasion in the state, yet habeas corpus has been suspended by the Proclamation of the governor, in reliance on this statute.

PETITION FOR WRIT OF MANDAMUS

A. TO DIRECT THE GOVERNOR TO END HOUSE ARRESTS

The “Stay Home – Stay Safe” Executive Orders of Inslee constitute an arrest of each person in the state of Washington. When analyzing whether a seizure has occurred, the essential inquiry is whether, under the circumstances, a reasonable person would believe he or she is not free to leave. *State v. Reichenbach*, 153 Wash.2d 126, 101 P. 3d 80, 86-87 (2004); *State v. Mendez*, 137 Wash.2d 208, 222, 970 P.2d 722 (1999); *State v. Nettles*, 70 Wash.App. 706, 709, 855 P.2d 699 (1993); *State v. Whitaker*, 58 Wash.App. 851, 853, 795 P.2d 182 (1990). An objective test is used to determine whether a person is in a custodial arrest. *State v. Lorenz*, 152 Wash.2d 22, 36-37, 93 P.3d 133 (2004). In other words, the test is whether a reasonable detainee under these circumstances would consider himself or herself under a custodial arrest. See *id.*

All the “Stay Home – Stay Safe” orders contain an edict “prohibiting all people in Washington State from leaving their homes”. Any reasonable person would consider themselves detained in their houses under this order. A seizure must be reasonable under the Fourth

Amendment and Article 1, Section 7 of the Washington Constitution. *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968); *State v. Lesnick*, 84 Wn.2d 940, 530 P.2d 243 (restraint of an individual by the police, even if not an arrest is seizure), *cert. denied*, 423 U.S. 891, 46 L.Ed.2d 122, 96 S.Ct. 187 (1975); *Davis v. Mississippi*, 394 U.S. 721, 22 L.Ed.2d 676, 89 S.Ct. 1394 (1969).

Article I, Section 3 of the Washington Constitution, provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Yet, under this edict, no person in Washington received any process of law whatsoever. Petitioners were never served a summons or notice, never had an opportunity for a hearing, never had the opportunity to present witnesses in their favor, and never had any other attributes of due process long recognized in Washington. Instead, Petitioners, like all other Washingtonians, were placed summarily under house arrest.

Article 1, section 7 of the Washington Constitution provides, that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The private affairs of Petitioners and other Washingtonians were invaded based upon a risk assessment made by the governor without legislative oversight, and which subjected Petitioners and other Washingtonians to house arrest, although the governor failed to

articulate even a reasonable suspicion that Petitioners had or were exposed to the COVID-19 virus.

Petitioners request that the Writ of Mandamus to be issued by this court direct the governor to rescind the words “prohibiting all people in Washington State from leaving their homes” from every Proclamation issued from his office.

B. TO DIRECT THE GOVERNOR TO RESTORE HABEAS CORPUS

In the governor’s Proclamations 20-25; 20-25.1; 20-25.2; and 20-25.3, the governor claims authority under RCW 38.08. RCW 38.08.030 provides that "Limited military law" is a partial subordination of civil authority by the setting up of an additional police power vested in the military force which shall have **the right to try all persons apprehended by it in such area by a military tribunal** or turn such offender over to civil authorities within five days for further action, during which time **the writ of habeas corpus shall be suspended** in behalf of such person.

Washington’s Constitution secures for citizens of this state the right to petition for the writ. “The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.” Const. art. 1, § 13. The writ referred to in this clause (hereinafter the suspension clause) is generally acknowledged to be the writ of *habeas corpus ad subjiciendum*, which is a writ issued pursuant to

a petition, directing an official who is detaining another to show the cause of that person's confinement, and why he or she should not be released. *Matter of Personal Restraint of Runyan*, 121 Wn.2d 432, 853 P. 2d 424, 439-440 (1993); citing *Toliver v. Olsen*, 109 Wn.2d 607, 609, 746 P.2d 809 (1987).

Habeas predates both Washington State and the United States. As we noted recently, it is

"a writ antecedent to statute, and throwing its root deep into the genius of our common law.... It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I."

In re Pers. Restraint of Grantham, 168 Wash.2d 204, 210, 227 P.3d 285 (2010) (internal quotation marks omitted) (quoting *Fay v. Noia*, 372 U.S. 391, 400, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963), *overruled in part on other grounds by Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977)). It is embedded in the common law. Horace G. Wood & Charles F. Bridge, *A Treatise on the Legal Remedies of Mandamus and Prohibition, Habeas Corpus, Certiorari, and Quo Warranto* 111 (3d ed. 1896) (citing *People ex rel. Tweed v. Liscomb*, 60 N.Y. 559 (1875)). "The writ of *habeas corpus* existed at common law prior to the promulgation of the Magna Charta." *In re Habeas Corpus of Grieve*, 22 Wash.2d 902, 904, 158 P.2d 73 (1945). For much of our history, this court restricted its post-

conviction collateral review of final judgments to "but one question... Is this a judgment or a nullity?" without any consideration of the record. *Id.* This seemed to be predicated on the principle that as habeas was a writ, relief was not available if there was an adequate remedy at law, such as an appeal. *In re Habeas Corpus of Cavitt*, 170 Wash. 84, 15 P.2d 276 (1932) (holding that habeas relief was available when trial judge sua sponte ordered man who had finished serving his sentence to serve it again). However, by case law, court rule, and ultimately, by statute, consideration of collateral challenges expanded. *See* Laws of 1989, ch. 395 (enacting a personal restraint petition statute). *In re Coats*, 173 Wash.2d 123, 267 P.3d 324, 327 (2011).

Habeas corpus has also been a part of the fabric of Washington statutes for as long as we have existed as Washington. The very first territorial legislature enacted a generous habeas corpus act in 1854. Laws of 1854, §§ 434-456. It proudly proclaims that "[e]very person restrained of his liberty under any pretence whatever, may prosecute a writ of habeas corpus to enquire into the cause of the restraint, and shall be delivered therefrom when illegal." *Id.* § 434. One restrained could demand that his or her custodian prove that the restraint was lawful. *Id.* § 435. The court would "determine the cause, and if no legal cause be shown for the restraint ... shall discharge the party." *Id.* § 444. However, this generous

act for challenging most types of restraint was more restrictive when challenging restraints imposed by courts.[4] "No court or judge shall enquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired ... [u]pon any process issued on any final judgment of a court of competent jurisdiction." *Id.* § 445. This principle was reenacted by many subsequent legislatures. See Laws of 1869, § 617; Code of 1881, § 677; Laws of 1891, ch. 43, § 1; Laws of 1947, ch. 256, § 3. The courts and the legislature, while certainly not eliminating the judges' authority to issue writs of habeas corpus, have provided for judicial review and refined collateral challenges to court-imposed sentences. *In re Coats, op cit.*, at 328-329.

Without any express constitutional authority to act, the statute allows the governor to try all persons apprehended by it in such area by a military tribunal, and to suspend the writ of habeas corpus. The governor has claimed this authority in his COVID Proclamations, and such action is egregious to our Constitution.

Petitioners request that the Court determine the constitutionality of RCW 38.08.030, and that the Writ of Mandamus to be issued by this court direct the governor to rescind the words claiming authority under RCW 38.08 from every Proclamation issued from his office.

**C. TO DIRECT THE GOVERNOR TO RESTORE RELIGIOUS LIBERTY
AND THE FREE PRACTICE THEREOF IN WASHINGTON.**

Jay Inslee set forth Proclamation 20-05 and imposed a Stay Home – Stay Healthy Order throughout Washington State, which issued an edict “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.”

The constitution requires that a person shall not be deprived of life, liberty, or property without due process of law. U.S. Const. amends. 5, 14; Const. art. 1, § 3. An individual's liberty interest is important and fundamental. *United States v. Salerno*, 481 U.S. 739, 750, 95 L.Ed.2d 697, 107 S.Ct. 2095 (1987). When a state's laws impinge on fundamental rights, such as liberty, they are constitutional only if they further compelling state interests, and are narrowly drawn to serve those interests. *State v. Farmer*, 116 Wn.2d 414, 429, 805 P.2d 200, 812 P.2d 858 (1991); *In re Schuoler*, 106 Wn.2d 500, 508, 723 P.2d 1103 (1986).

The Proclamations of Inslee are not law, and in fact are void *ab initia* because they exceed the bounds of the constitutional authority provided to the governor. Petitioners have received no due process of any

sort, yet they have been deprived of their liberty and property. See Appendix B: Declarations of Petitioners.

Petitioners request that the Writ of Mandamus to be issued by this court direct the governor to rescind Proclamations 20-25; 20-25.1; 20-25.2; and 20-25.3.

D. TO DIRECT THE GOVERNOR TO RESTORE THE RIGHT OF ASSEMBLY.

Jay Inslee set forth Proclamation 20-05 and imposed a Stay Home – Stay Healthy Order throughout Washington State, which issued an edict “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings **of any kind** regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.”

Article I, Section 4 is expressly violated by this edict. “The right of petition and of the people peaceably to assemble for the common good shall never be abridged.” Because of Inslee’s orders, it is abridged.

“It is undisputed that gathering initiative signatures in some manner, at some place, is a constitutionally guaranteed practice. It is at the core of both the First Amendment and Const. art. 1, § 5.” *Alderwood Assocs. v. Env'tl. Council*, 96 Wn.2d 230, 239-240, 635 P.2d 108 (1981), citing *United States v. Cruikshank*, 92 U.S. 542, 552, 23 L.Ed. 588 (1875);

Sutherland v. Southcenter Shopping Center, Inc., 3 Wn. App. 833, 478 P.2d 792 (1970), review denied, 79 Wn.2d 1005 (1971). As stated by the United States Supreme Court:

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.

Cruikshank, at 552. The right is also specifically guaranteed by the Constitution of the State of Washington, Article II, Section 1(a), which states that "[t]he first power reserved by the people is the initiative."

Petitioners request that the Writ of Mandamus to be issued by this court direct the governor to rescind Proclamations 20-25; 20-25.1; 20-25.2; and 20-25.3.

E. TO DIRECT THE GOVERNOR TO END DISCRIMINATION BETWEEN ESSENTIAL AND NON-ESSENTIAL BUSINESSES IN WASHINGTON.

The most offensive provision of the governor's Proclamations is the provision requiring that all "prohibiting . . . all non-essential businesses in Washington State from conducting business, within the limitations provided herein. Proclamations 20-25 – 20-25.3. The governor, by his arbitrary and capricious decision, has determined which businesses are essential and which are "non-essential". Petitioners' businesses have been declared non-essential.

Washington Constitution article I, Section 12, and the Fourteenth Amendment to the United States Constitution guarantee that persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. *State v. Schaaf*, 109 Wash.2d 1, 17, 743 P.2d 240 (1987). Washington court has consistently construed the federal and state equal protection clauses identically and considered claims arising under their scope as one issue. *State v. Smith*, 117 Wash.2d 263, 281, 814 P.2d 652 (1991).

One of three standards of review have been employed when analyzing equal protection claims. *State v. Manussier*, 129 Wash.2d 652, 921 P. 2d 473, 483 (1996). Strict scrutiny applies when a classification affects a suspect class or threatens a fundamental right. *Id.* Intermediate or heightened scrutiny, used by this court in limited circumstances, applies when important rights or semi-suspect classifications are affected. *Id.*; see also *State v. Phelan*, 100 Wash.2d 508, 514, 671 P.2d 1212 (1983) (finding physical liberty to be an important, but not fundamental, right and a classification based solely upon wealth examined under heightened scrutiny).

Inslee has not narrowly tailored his “non-essential” determination, but has exacted a discriminatory edict which exacts disparate treatment between businesses similarly situated.

Petitioners request that the Writ of Mandamus to be issued by this court direct the governor to rescind Proclamations 20-25; 20-25.1; 20-25.2; and 20-25.3.

PETITION FOR RELIEF

Petitioners therefore seek the following relief:

That this court should issue a Writ of Mandamus which:

- A. Vacates the “Stay Safe – Stay Home” Executive Orders of Governor Jay Inslee; Specifically Orders 20-25; 20-25.1; 20-25.2 and 20-25.3 that would result in the governor having to act in accord with the constitution and to seek and receive legislative approval through an open government legislative process for any further action;
- B. Determines the constitutionality of RCW 38.08.030; and RCW 43.06.220(1)(b); 43.06.220(1)(e); 43.06.220(1)(f); 43.06.220(1)(h).

Respectfully submitted this 21st day of May 2020.



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Appendix A:

Executive order 20-25

Executive order 20-25.1

Executive order 20-25.2

Executive order 20.25.3



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**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05**

20-25

STAY HOME – STAY HEALTHY

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, and 20-24, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, there are currently at least 2,221 cases of COVID-19 in Washington State and, tragically, 110 deaths of Washingtonians associated with COVID-19; and

WHEREAS, models predict that many hospitals in Washington State will reach capacity or become overwhelmed with COVID-19 patients within the next several weeks unless we substantially slow down the spread of COVID-19 throughout the state; and

WHEREAS, hospitalizations for COVID-19 like illnesses are significantly elevated in all adults, and a sharply increasing trend in COVID-19 like illness hospitalizations has been observed for the past three (3) weeks; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim: that a State of Emergency continues to exist in all counties of Washington State; that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended; and that Proclamations 20-05, 20-07, 20-11, 20-13, and 20-14 are amended and superseded by this Proclamation to impose a Stay Home – Stay Healthy Order throughout Washington State by prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations provided herein.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(1)(h), to help preserve and maintain life, health, property or the public peace, and to implement the Stay Home—Stay Healthy Order described above, I hereby impose the following necessary restrictions on participation by all people in Washington State by prohibiting each of the following activities by all people and businesses throughout

Washington State, which prohibitions shall remain in effect until midnight on April 6, 2020, unless extended beyond that date:

1. **All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services.** This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that all people in Washington State are immediately prohibited from leaving their home or place of residence except to conduct or participate in (1) essential activities, and/or (2) employment in providing essential business services:

- a. **Essential activities** permitted under this Proclamation are limited to the following:
 - 1) **Obtaining necessary supplies and services** for family or household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, and products necessary to maintain safety, sanitation and essential maintenance of the home or residence.
 - 2) **Engaging in activities essential for the health and safety** of family, household members and pets, including things such as seeking medical or behavioral health or emergency services and obtaining medical supplies or medication.
 - 3) **Caring for** a family member, friend, or pet in another household or residence, and to transport a family member, friend or their pet for essential health and safety activities, and to obtain necessary supplies and services.
 - 4) **Engaging in outdoor exercise activities**, such as walking, hiking, running or biking, but only if appropriate social distancing practices are used.
- b. **Employment in essential business services** means an essential employee performing work for an essential business as identified in the "[Essential Critical Infrastructure Workers](#)" list, or carrying out minimum basic operations (as defined in Section 3(d) of this Order) for a non-essential business.
- c. **This prohibition shall not apply to** individuals whose homes or residences are unsafe or become unsafe, such as victims of domestic violence. These individuals are permitted and urged to leave their homes or residences and stay at a safe alternate location.
- d. **This prohibition also shall not apply to** individuals experiencing homelessness, but they are urged to obtain shelter, and governmental and other entities are strongly encouraged to make such shelter available as soon as possible and to the maximum extent practicable.

- e. For purposes of this Proclamation, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
2. **All people in Washington State shall immediately cease participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified herein.** Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events. This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that all people in Washington State are immediately prohibited from participating in public and private gatherings of any number of people for social, spiritual and recreational purposes. **This prohibition shall not apply** to activities and gatherings solely including those people who are part of a single household or residential living unit.

3. **Effective midnight on March 25, 2020, all non-essential businesses in Washington State shall cease operations except for performing basic minimum operations. All essential businesses are encouraged to remain open and maintain operations, but must establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Washington State Department of Health Guidelines.** This prohibition shall remain in effect until midnight on April 8, 2020, unless extended beyond that date.

To implement this mandate, I hereby order that, effective midnight on March 25, 2020, all non-essential businesses in Washington State are prohibited from conducting all activities and operations except minimum basic operations.

- a. **Non-essential businesses** are strongly encouraged to immediately cease operations other than performance of basic minimum operations, but must do so no later than midnight on March 25, 2020.
- b. **Essential businesses** are prohibited from operating under this Proclamation unless they establish and implement social distancing and sanitation measures established by the United States Department of Labor's Guidance on Preparing Workplaces for COVID-19 at <https://www.osha.gov/Publications/OSHA3990.pdf> and the Washington State Department of Health Workplace and Employer Resources & Recommendations at <https://www.doh.wa.gov/Coronavirus/workplace>.
- c. **This prohibition does not apply to** businesses consisting exclusively of employees or contractors performing business activities at their home or residence, and who do not engage in in-person contact with clients.



**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 AND 20-25**

**20-25.1
EXTENDING STAY HOME – STAY HEALTHY
TO MAY 4, 2020**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington state as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06, 20-07, 20-08, 20-09, 20-10, 20-11, 20-12, 20-13, 20-14, 20-15, 20-16, 20-17, 20-18, 20-19, 20-20, 20-21, 20-22, 20-23, 20-24, 20-25, 20-26, 20-27, 20-28, 20-29, 20-30, 20-31, 20-32, 20-33, 20-34, 20-35, 20-36, 20-37, 20-38, and 20-39, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamation 20-25, Stay Home – Stay Healthy, prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations therein; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and is a significant health risk to all of our people, especially members of our most vulnerable populations; and

WHEREAS, since Proclamation 20-25 was issued on March 23, the number of confirmed cases and deaths in Washington State has more than doubled, and there are currently at least 5,984 cases of COVID-19 in Washington State with 247 associated deaths; and, furthermore, models predict that many hospitals in Washington State will reach capacity or become overwhelmed with COVID-19 patients within the next few weeks unless we significantly slow its spread throughout the state; and

WHEREAS, hospitalizations for COVID-like illnesses have been sharply increasing for the past month, and a large surge in the number of serious COVID-19 infections will compromise the ability of our health care system to deliver necessary health care services; and

WHEREAS, these conditions necessitate that to protect the health and safety of all Washingtonians, the stringent restrictions imposed on the people of Washington State in Proclamation 20-25 must be continued until May 4, 2020; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamation 20-25 (Stay Home – Stay Healthy) is amended to extend all of its provisions and each expiration date therein to 11:59 PM on May 4, 2020. All other provisions of Proclamation 20-25 shall remain in full force and effect.

I again direct that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the Washington State Comprehensive Emergency Management Plan and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.



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**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05, 20-25 AND 20-25.1**

20-25.2

**ADJUSTING
STAY HOME – STAY HEALTHY
TO MAY 4, 2020**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-52, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamation 20-25, and 20-25.1 (Stay Home – Stay Healthy), prohibiting all people in Washington State from leaving their homes or participating in gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations therein; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and is a significant health risk to all of our people, especially members of our most vulnerable populations; and

WHEREAS, while there are currently at least 13,521 cases of COVID-19 in Washington State with 749 associated deaths, current models predict that we have started to slow its spread throughout the State; and

WHEREAS, Washington State is known for a high level of outdoor recreation on its many trails, parks, lakes, beaches and other outdoor recreational areas, and outdoor recreation is a fundamental part of maintaining physical, emotional and mental health, particularly in a time of great stress;

WHEREAS, these conditions now permit adjustment of some of the prohibitions in Proclamation 20-25 and 20-25.1 to allow for some recreational activities and related employment, while continuing to protect the health and safety of all Washingtonians by retaining the remainder of the prohibitions imposed in Proclamations 20-25 and 20-25.1; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under RCW 38.08, 38.52 and 43.06, do hereby proclaim and order that a State of Emergency continues to exist in all counties of the state, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25 and 20-25.1 (Stay Home – Stay Healthy) are amended to extend all of their provisions, except those specifically listed below and as specifically allowed in the requirements available [here](#), and each expiration date therein, to May 4, 2020:

As of April 27, 2020, in order to prepare for re-opening on May 5, 2020, all employees necessary to operate and maintain day-use activity and trails, including those in state parks and state public lands, state hunting and fishing operations, golf operations, and day-use activities and trails in other public parks and public lands are authorized to return to work; and

As of May 5, 2020, the following outdoor recreational activities, when and where permitted, are authorized to commence so long as participants fully comply with the social distancing and coronavirus related hygiene requirements found [here](#), such as:

- Recreational hunting, fishing, and boating
- Outdoor exercise, including hiking, running, walking and biking
- Golfing
- Day-use activities at public parks and public lands

All other provisions of Proclamation 20-25 and 20-25.1 shall remain in full force and effect.

ADDITIONALLY, except as exempted above, I continue to prohibit all other public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; team sports activities, and similar activities that involve a gathering of people other than a household unit. This prohibition continues to apply to planned wedding and funeral events.

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05, 20-25, 20-25.1, and 20-25.2**

20-25.3

**ADJUSTING AND EXTENDING
STAY HOME – STAY HEALTHY
TO MAY 31, 2020**

Safe Start Washington: Phase I – Re-Opening Washington

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-52, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamations 20-25, 20-25.1, and 20-25.2 (Stay Home – Stay Healthy), prohibiting all people in Washington State from leaving their homes or participating in social, spiritual or recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations therein; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State and remains a significant health risk to all of our people, especially members of our most vulnerable populations; and

WHEREAS, when I last amended the Stay Home – Stay Healthy order (Proclamation 20-25.2) on April 27, 2020, there were 13,521 cases of COVID-19 in Washington State with 749 deaths; and, just five days later, through May 2, 2020, the Department of Health confirmed another 1,664 cases and 85 more deaths, for a total of 15,185 cases with 834 associated deaths, demonstrating the ongoing, present threat of this lethal disease; and

WHEREAS, while there continues to be a significant number of cases of COVID-19 in Washington State with associated deaths, the data and epidemiological models predict that we have passed the peak of the virus' progression in the state; and, the health experts credit this decline to the mandatory social distancing practices and prohibitions we have put in place; and

WHEREAS, the health professionals and epidemiological modeling experts predict that we have passed the peak of the progression in the state, and the data suggests it is appropriate to continue a careful, phased, and science-based approach to slowly re-opening Washington State. In addition, modelers agree that fully relaxing social distancing measures will result in a sharp increase in the number of cases; and

WHEREAS, this unprecedented health crisis has caused extraordinary anxiety and a significant disruption of routine and important activities for every Washingtonian; and I recognize the extraordinary resiliency, strength, adaptability, and courage of every Washingtonian during this difficult time; and

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

WHEREAS, the science also suggests that some business activities can be conducted with limited exposure to customers while ensuring safe social distancing and hygiene practices. These business activities include landscaping, pet walking, car washing, vehicle and vessel sales, and retail limited to curbside pickup, all of which are important to revitalizing Washington State's economy, restoring jobs and providing necessary goods and services; and

WHEREAS, counties in Washington State with lower population density generally are experiencing a lower transitory population which decreases the risk of virus spread and, under appropriate conditions, are able to control and absorb virus outbreaks within the capacity of existing local and regional health care systems without significant increased risk of being overwhelmed; and

WHEREAS, the Washington State Department of Health's data demonstrates that some less-populated counties with fewer than 75,000 residents have not identified a new COVID-19 case for the last three consecutive weeks, and this data supports providing those counties with an opportunity to lift additional restrictions, subject to certain conditions and requirements, an opportunity that is not yet safe to offer to other counties; and

WHEREAS, based on the science and data, current COVID-19 pandemic conditions now permit further adjustment of the prohibitions in Proclamations 20-25, 20-25.1 and 20-25.2 to allow for resumption of some religious services and certain business activities, and the opportunity for less densely populated counties that have not identified a resident with COVID-19 in the last three weeks to seek additional exceptions to these prohibitions under certain limited circumstances, while retaining the remainder of the restrictions imposed in Proclamations 20-25, 20-25.1 and 20-25.2 to protect the health and safety of all Washingtonians; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect as otherwise amended, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), Proclamations 20-25, 20-25.1 and 20-25.2 (Stay Home – Stay Healthy) are amended to extend all of the prohibitions and each expiration date therein to May 31, 2020, except for those prohibitions regarding the specific activities listed below. All other provisions of Proclamations 20-25, 20-25.1, 20-25.2 shall remain in full force and effect.

FURTHERMORE, in collaboration with the Washington State Department of Health, and based on analysis of the data and epidemiological modeling, I have established a phased-in approach to re-opening Washington State, which can be found in the Safe Start Washington re-opening plan [here](#); and, while all counties are currently in Phase I, counties with a population of less than 75,000 that have not identified a resident with COVID-19 the three most recent consecutive weeks, may request an exemption from specific aspects of the remaining prohibitions of this Proclamation by submitting a variance application to the Secretary of the Washington State Department of Health in compliance with the requirements found in the Safe Start Washington re-opening plan.

FURTHERMORE, while I continue to permit remote spiritual and religious services, and while I continue to classify religious counseling as an essential activity that may be conducted in person if it is not possible to provide those counseling services remotely, I now hereby order that religious services may also be provided as a drive-in service, with one household per vehicle, but only so long as participants fully comply with requirements that will be issued as soon as possible, but no later than May 15, 2020, and with the social distancing requirements and coronavirus related hygiene recommended by the Washington State Department of Health.

FURTHERMORE, I continue to permit the low-risk activities previously permitted, including some outdoor recreation as reflected in Emergency Proclamation 20-25.2 and its accompanying guidance materials issued April 27, 2020, as well as the business activities reflected or clarified in formal guidance documents issued on March 25, 2020 (construction), March 27, 2020 (real estate and mortgage), March 31, 2020 (general guidance) and April 29, 2020 (construction).

FURTHERMORE, I hereby order that the data and science supports re-opening additional low-risk activities during Phase I, including the business activities listed below. Re-opening these low-risk activities may occur when participants are able to fully comply with the industry-specific requirements that will be issued as soon as possible but no later than May 15, 2020, which, at a minimum, will require compliance with the social distancing and hygiene requirements indicated by the Washington State Department of Health:

- Landscaping and lawn care
- Vehicle and vessel sales
- Pet walking
- Retail (curb-side pick-up orders only)
- Car washes

FURTHERMORE, in collaboration with the Washington State Department of Health, in furtherance of the physical, mental, and economic well-being of all Washingtonians, I will continue to analyze the data and epidemiological modeling and adjust the Safe Start Washington re-opening plan accordingly.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military

Appendix B:

Declaration of Jeffrey Nelson

Declaration of Michael Jellison

Declaration of Alicia Munro

Declaration of Zach Miller

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

DECLARATION OF JEFFREY NELSON

I, Jeffrey Nelson, being over the age of 18 years and legally competent to testify to the matters set forth herein, with personal knowledge of the same, on oath and subject to the law of perjury in the state of Washington, now declare as follows:

1. I am the Owner of Bodyshop Fitness LLC. I am a small strength and conditioning gym located in Bothell, WA. I opened my Doors for business on November 16th, 2019, and had to close them on March 16th, 2020 due to the Governor’s Stay at home order.

2. This stay at home order has been detrimental to my business. I am a brick and mortar location that focuses on individuals coming to the facility to train on my equipment. We are not a group exercise facility, or a personal training studio and we rely on people visiting our facility to generate our revenue. Additionally, I have been forced to suspend the memberships of my members since they no longer have access to my facility. I am still forced to continue to pay my monthly expenses related to continuing the operations of my facility even though I am not open. These expenses are roughly seventeen thousand dollars (\$17,000) per month. As a result, I have lost virtually all my revenue for the last two and a half months and have incurred expenses of roughly forty thousand dollars (\$40,000).

3. I have tremendous demand for my services, and I am fully prepared to open my doors having implemented sanitary and hygiene protocols outlined by the Center for Disease Control (CDC). This shutdown had depleted all my savings and if I am not able to open my doors again in the next few weeks, I will be forced to close my doors for good and declare bankruptcy.

Signed in _____ Washington, this 20th day of May 2020.

Jeffrey Nelson
President, Bodyshop Fitness LLC
Bodyshop Fitness LLC

Signed in _____ Washington, this 20th day of May 2020.

Jeffrey Nelson
President, Bodyshop Fitness LLC
Bodyshop Fitness LLC

work and I have no idea what we will do if they fail from no fault of our own. We will be left without any funds to start over.

4. Before Covid-19, we had 2 thriving gyms and all of a sudden it came to a screeching halt! We have had some members hang in there and try and support us but they are slowly beginning to drop off because this is lasting much longer than we expected. We have lost half of our members not to mention our personal training clients. It takes years to build up a gym and client base and it will take a long time to build that back up if we get to open. However, we will have mounting debt by the time we reopen due to deferred rent, utilities and all of our bills that keep coming in. We need to get our doors open now before any more damage is done so we have a fighting chance to survive. If these closures continue our lives as we know it are over and my children's lives will change dramatically for the worse. Small business cannot survive this much longer.

Signed in Manson Washington, this 20th day of May 2020.


Alicia Munro

6. If we are not allowed to open until the 3rd Phase of Inslee's plan, on the presumptive date of June 22, 2020, losses will total approximately \$156,474.15 for that one business. These damages are unsustainable. This misguided order will destroy the American dream for which we have striven so hard of building a fitness community that enhances physical and mental health and quality of life for our members.

Signed in Everett, Washington, this 20th day of May 2020.



Zach Miller
President,

From: [OFFICE RECEPTIONIST, CLERK](#)
To: "stephen.pidgeon@comcast.net"
Subject: RE: New case filing - Petition for Writ of Mandamus
Date: Wednesday, May 27, 2020 8:16:30 AM
Attachments: [image001.png](#)

Thank you, received 5-27-2020

-

From: stephen.pidgeon@comcast.net [mailto:stephen.pidgeon@comcast.net]
Sent: Tuesday, May 26, 2020 5:06 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: New case filing - Petition for Writ of Mandamus

Thank you for accommodating this filing. Please see the attached Petition for Writ of Mandamus. You should have received a money order for \$250 together with a paper copy of the Petition today as well.

Stephen Pidgeon
Attorney at Law, P.S.

On May 21, 2020 at 7:48 PM "OFFICE RECEPTIONIST, CLERK"
<SUPREME@COURTS.WA.GOV> wrote:

Mr. Pidgeon, we will accept the writ via e-mail. Please send what you would like submitted in to this e-mail address and payment can be mailed in.

From: stephen.pidgeon@comcast.net [mailto:stephen.pidgeon@comcast.net]
Sent: Thursday, May 21, 2020 4:25 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: New case filing - Petition for Writ of Mandamus

Can I just mail it with the fee for filing?

Stephen Pidgeon

On May 21, 2020 at 5:48 PM "OFFICE RECEPTIONIST, CLERK"
<SUPREME@COURTS.WA.GOV> wrote:

Mr. Pidgeon: The payment for the filing fee (\$250) can be mailed to the Supreme Court. Our mailing address is:

Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Please make payment by check or money order payable to the Washington Supreme Court.

The writ can be filed through the portal by selecting "Original Action Against State Officer" on this screen:

Select a Court

* Select a Court to File with:

Supreme Court



What do you want to do?

Start a New Case?

- Motion for Discretionary Review of Court of Appeals
- Motion for Discretionary Review of Superior Court (RAP 15.2(h))
- Motion to Transfer from Court of Appeals
- Original Action Against State Officer
- Petition for Review
- Personal Restraint Petition
- Death Penalty Personal Restraint Petition

From: stephen.pidgeon@comcast.net [<mailto:stephen.pidgeon@comcast.net>]

Sent: Thursday, May 21, 2020 2:20 PM

To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>

Subject: New case filing - Petition for Writ of Mandamus

Stephen Pidgeon

Attorney at Law, P.S.

1523 132nd Street SE, Suite C 350

Everett, Washington 98204

Telephone: (425) 347-7513

Fax: (425)265-7593

Dear Clerk of the Supreme Court:

Attached is a Petition for Writ of Mandamus that I would like to file today. I don't find any means to file it on the Appellate Portal. In addition, I would like to pay the filing fee. Please contact me as soon as possible with further instructions.

Stephen Pidgeon

Attorney at Law, P.S.

1523 - 132nd Street SE

Suite C-350

Everett, WA 98208

(425)347-7513 Telephone

(425)265-7593 Facsimile

Stephen Pidgeon, Attorney at Law, P.S. CONFIDENTIALITY NOTICE: This communication and any document(s) accompanying it contains confidential information belonging to the sender which may be protected by attorney-client privilege and other privileges pertaining to the documents. I am sure you are not interested in it, and I apologize for taking your time if you received it and have no clue as to why; so if you are not the intended recipient, you are hereby notified that disclosure, copying, distribution, or taking any action whatsoever with regard to the contents of this communication is strictly prohibited, and you can just trash it. Also, let me know by Reply, so I don't send this by error again and waste any more of your time. Thanks.