HON. BENJAMIN SETTLE
NOTE ON MOTION CALENDAR:
JUNE 10, 2020

UNITED STATES DISTRICT COURT
WESTERN DIVISION OF WASHINGTON

CLINT DIDIER, LISA THOMAS, TIM EYMAN, LAWANDA JOY HATCH, DEAN WELLSFRY, PATTY DETRO, and JASON BERNICA, and OTHER NONESSENTIAL WASHINGTONIANS SIMILARLY SITUATED, Plaintiffs, v. JAY INSLEE, in his capacity as Governor of the state of Washington, Defendant,	NO. 3:20-cv-5408 **PLAINTIFFS' SUR REPLY**

PLAINTIFFS' SUR REPLY

In response to Defendant's Sur Reply and Notice of Additional Authorities, Plaintiffs reply as follows:

The Constitutional Republic has been indefinitely suspended in Washington by the Proclamations of defendant based on his fear of the COVID-19 virus. This is unprecedented in

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American history. The efficacy of the virus itself is not at issue here, however, but only whether Jay Inslee's Proclamations are actions to protect the public health and safety, or political shenanigans being used to manipulate the social order to obtain objectives which are not related to public safety, such as terminating the free state, securing an environment for his own reelection by prohibiting opposing candidates from meeting, and preferring speech of radical progressives in Seattle, while prohibiting churches which espouse values contrary to his from congregating.

Unlike the situation in *Jacobson v. Commonwealth of Massachusetts,* 197 U.S. 11, 24-25 (1905), which concerned a smallpox vaccination protocol, Inslee has caused more than one million people to lose their jobs in this state alone, and has dramatically decreased the quality of life, and the financial solvency of people like the plaintiffs, with actions that constitute the most radical actions ever taken by a state in the history of the United States, suspending and overwriting both the state constitution and the Bill of Rights. Inslee has reserved unto himself the authority to maintain this tyranny "until there is an effective vaccine, effective treatment or herd immunity." See Proclamation 20-25.4. Until then, the plaintiffs are subject to his ever-changing whim.

"The substantive component of the Due Process Clause forbids the government from depriving a person of life, liberty, or property in such a way that . . . interferes with the rights implicit in the concept of ordered liberty." *Enquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 996 (9th Cir. 2007) (quotation and citation omitted); *see also Yim v. City of Seattle,* 194 Wash. 2d 682, 286 (2019) (unless Washington courts adopt "heightened protections as a matter of independent state law, state substantive due process claims are subject to the same standards as federal substantive due process claims.)"

There is no quarantine exception to the Bill of Rights, nor was one ever contemplated by

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the founders of this nation. The police power of the state has always been limited in respect of quarantines. It is "within the power of the judiciary to review action in respect of a matter affecting the general welfare any rule or a statute purporting to have been enacted to protect the public health, the public morals or the public safety, when the rule or statute has no real or substantial relation to those objects, **or is,** beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Jacobsen, op cit., citing Mugler v. Kansas,* 123 U.S. 623, 661 (1887); *Minnesota v. Barber,* 136 U.S. 313, 320; *Atkin v. Kansas,* 191 U.S. 207, 223.

As the court said in *Lochner v. New York:* "It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined *from the natural and legal effect of the language employed*; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. *Lochner v. New York,* 198 US 45, 64, 25 S. Ct. 539, 49 L. Ed. 937 (1905), *citing Minnesota v. Barber,* 136 U.S. 313; *Brimmer v. Rebman,* 138 U.S. 78. The court looks beyond the mere letter of the law in such cases. *Yick Wo v. Hopkins,* 118 U.S. 356.

Federal law allows for a quarantine only when an "individual [is] reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals

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who, while infected with such disease in a qualifying stage, will be moving from a State to another State." 42 USC §264 (d)(1). 42 CFR §70.6 also only allows for quarantine when "(1) The individual is reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage and is moving or about to move from a State into another State; or

(2) The individual is reasonably believed to be infected with a quarantinable communicable disease in a qualifying stage and constitutes a probable source of infection to other individuals who may be moving from a State into another State."

Yet Inslee terminated the First Amendment for all Washingtonians and destroyed the lives of others by labeling some "non-essential" in an action far beyond the limits of the equal protection clause of the Fourteenth Amendment. His Proclamations are "repugnant to the Constitution of the United States."

The court must therefore weigh whether Inslee's proclamations inordinately deny the rights of plaintiffs as protected under the First, Fifth and Fourteenth Amendments in a way not rationally connected to Inslee's stated purpose. Inslee has overthrown the freedoms protected by the US Constitution by his mere proclamations, without demonstrating the threat to the public health and safety. Such a medical tyranny is repugnant to the Constitution. It should end here.

Pursuant to Fed. R. Civ. P 65(a)(2), plaintiffs request the court advance the trial on the merits and consolidate it with the hearing of this motion.

Respectfully submitted this 19th day of July 2020.

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CERTIFICATE OF SERVICE

The undersigned now certifies that a true and correct copy of the foregoing was served upon the following attorneys of record by means of the electronic filing system as provided by the United States District Court, Western Division of Washington, commensurate with its filing on this 19th day of July 2020.

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