No. 24-A 23A933

In The
Supreme Court of the United States

KURT A. BENSHOOF,

Applicant,

v.

FREYA R. BRIER, CITY OF SEATTLE,
ANN D. DAVISON, PUGET CONSUMERS CO-OP,

Respondents.

To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
Acting Circuit Justice for the Ninth Circuit

Emergency Application for Writ of Injunction

Kurt A. Benshoof, *Pro Se*
1716 N 128th Street
Seattle, WA 98133
E-mail: kurtbenshoof@gmail.com
Telephone: (206) 460-4202

QUESTIONS PRESENTED

In the most prolonged subversion of the Civil Rights Act in Washington state history, Respondents have retaliated in concerted parallel action against Applicant's rights for over three years.

PCC employees arbitrarily demanded Benshoof wear a mask *or* face shield to shop for groceries, yet the Department of Health stated a face shield *does nothing.* PCC gave Seattle police a *civil* admonishment letter addressed to Benshoof. Police asserted *criminal* jurisdiction, claiming Benshoof had violated a *law* by not complying with a store *sign.*

Numerous Seattle police officers refused to wear face coverings, including inside hospitals. Office of Police Accountability Director Myerberg chose, "not to review mask noncompliance through the lens of insubordination." No officer was disciplined, let alone charged with a crime, yet Benshoof was repeatedly charged with criminal trespass for grocery shopping sans face covering, prosecuted for over three years, and lives in fear of immediate, indefinite, and unlawful imprisonment from the City issuing $105,000 in void *ab initio* arrest warrants.

The questions presented are:

1. Whether Respondents must be enjoined from continuing to retaliate against Applicant for his religious beliefs, and subjecting Applicant to segregationist discrimination, in violation of the Civil Rights Act of 1964 and the First Amendment.
2. Whether Respondents must be enjoined from continuing to retaliate

against Applicant for exercising his right to life, liberty, and the pursuit of happiness by subjecting Applicant to segregationist discrimination, in violation of the Fourth Amendment.

3. Whether Respondents must be enjoined from perpetrating concerted, parallel acts with PCC employees, and City of Seattle police, prosecutors, and judges, against Applicant's religious beliefs and his life and liberty in furtherance of the ongoing and threatened imposition of excessive fines, or cruel and unusual punishments, upon Applicant in violation Eighth Amendment to the United States Constitution

4. Whether Respondents must be enjoined from perpetrating concerted parallel acts to violate, and their immediate threat to violate, the Due Process Clause of the Fourteenth Amendment by maliciously prosecuting Applicant under color of law.

5. Whether Respondents must be enjoined from perpetrating concerted parallel acts to violate, and their immediate threat to violate, the Equal Protection Clause of the Fourteenth Amendment by maliciously prosecuting Applicant under color of law.

PARTIES

Applicant Kurt A. Benshoof ("Benshoof") is reverend of a humble home church. Benshoof was petitioner in the Supreme Court of the United States, was appellant in the Ninth Circuit Court of Appeals, was petitioner and is co-plaintiff in the United States District Court for the Western District of Washington, was petitioner in the

Washington State Supreme Court, is appellant in the Washington State Court of Appeals, was plaintiff in King County Superior Court, and is defendant in Seattle Municipal Court.

Respondent Freya R. Brier ("Brier") is vice president of legal at Puget Consumers Co-Op ("PCC"), was Appellee in the Ninth Circuit Court of Appeals, was respondent and is a defendant in the United States District Court for the Western District of Washington.

Respondent CITY OF SEATTLE ("City") is a municipal corporation, was respondent in the Supreme Court of the United States, was respondent in the Ninth Circuit Court of Appeals, was respondent and is defendant in the United States District Court for the Western District of Washington, is appellee in the Washington State Court of Appeals, was defendant in King County Superior Court, and is plaintiff in Seattle Municipal Court.

Respondent Ann D. Davison ("Davison") is City Attorney for Respondent CITY OF SEATTLE and is a defendant in the United States District Court for the Western District of Washington.

Respondent PUGET CONSUMERS CO-OP ("PCC") is a corporation licensed to operate in the State of Washington with executive offices located at 3131 Elliot Avenue #500, Seattle, WA 98121. PCC was respondent in the Ninth Circuit Court of Appeals, was respondent and is defendant in the United States District Court for the Western District of Washington.

DECISIONS BELOW

The order of the Ninth Circuit Court of Appeals, dated April 1, 2024, dismissing Applicant's appeal from the district court dismissal order of his fourth petition for temporary restraining order, is attached hereto as Appendix A; docket number 24-952.

The order of the United States District Court for the Western District of Washington, dated February 16, 2024, denying Applicant's fourth petition for temporary restraining order, is attached hereto as Appendix B; docket number 2:23-cv-1392-JNW.

The order of the United States District Court for the Western District of Washington, dated October 31, 2023, denying Applicant's second petition for preliminary injunction, is attached hereto as Appendix C; docket number 2:23-cv-1392-JNW.

The order of the United States District Court for the Western District of Washington, dated October 6, 2023, denying Applicant's first motion for temporary restraining order, is attached hereto as Appendix D: docket number 2:23-cv-1392-JNW.

The order of King County Superior Court, dated February 5, 2024, denying Applicant's petition for writ of prohibition, is attached hereto as Appendix E; docket number 23-2-23749-8 SEA.

The order of King County Superior Court, dated February 5, 2024, denying Applicant's petition for writ of prohibition, is attached hereto as Appendix F: docket

number 23-2-23764-1 SEA.

JURISDICTION

Pursuant to Fed.R.Civ.P. 65 and Pub. L. 88-352 Title II, §§ 201-205 the Court has jurisdiction to grant injunctive relief.

Pursuant to 28 U.S.C. § 1331 this Court has jurisdiction and is required to adjudicate federal questions involving constitutional violations of Applicant's rights.

Pursuant to U.S.C. § 1651 this Court has original jurisdiction.

Pursuant to U.S.C. § 2283 this Court has jurisdiction to enjoin proceedings in Seattle Municipal Court pursuant to the express authorization of Congress, Pub. L. 88-352 Title II, §§ 201-205.

Pursuant to U.S.C. § 2283 this Court has jurisdiction to enjoin proceedings in Seattle Municipal Court to protect or effectuate its judgment in *Hamm v. City of Rockhill,* 379 U.S. 306 (1964).

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TO THE HONORABLE JUSTICE ELENA KAGAN:

Pursuant to Rules 20, 22, and 23 of this Court, and 28 U.S.C. § 1651; Applicant Kurt Benshoof ("Benshoof") respectfully requests a writ injunction precluding ongoing malicious prosecutions of Benshoof in violation of the Civil Rights Act of 1964, and threats of further immediate and irreparable harm.

District Court denied Benshoof's petition for injunction and motion for temporary restraining order. District Court claimed Benshoof's arguments were entirely frivolous and threatened Benshoof with sanctions. Benshoof's appeal to the Ninth Circuit Court of Appeals was denied. The Ninth Circuit claimed that the District Court's denial order was not tantamount to denying a preliminary injunction; therefore, the Ninth Circuit did not have appellate jurisdiction. The abuses of discretion by the lower courts were both copious and comical.

Circular Logic Case Summary

PCC: We're following health guidelines. Put on a mask or leave.

Benshoof: Being coerced to wear a face mask violates my religious beliefs.

PCC: You can wear a face shield instead of a mask.

Benshoof: The Department of Health—whose guidelines you *say* you are following—state that a face shield *does nothing.* That's arbitrary and capricious.

PCC: Our store policy is "No Mask No Entry." Wear a face covering or leave.

Benshoof: That's not a lawful condition of entry. PCC is a public accommodation.

PCC: We're trespassing you with our civil trespass admonishment letter.

Benshoof: A *civil* trespass admonishment cannot confer criminal jurisdiction.

PCC: We're calling the police.

Benshoof: I *already* called the police on *you* for violating RCW 9.91.010. The police can't assert *criminal* jurisdiction over your *civil* admonishment claim.

Seattle Police: PCC trespassed you.

Benshoof: Police cannot assert *criminal* jurisdiction to interfere in a *civil* dispute. That would be a Fourteenth Amendment violation.

Police: If you don't leave, we will arrest you.

Benshoof: Cite the *criminal law* I have violated for you to assert *criminal* jurisdiction.

Police: [Officers point to store sign] The store sign. It says, "No Mask, No Entry."

Benshoof: Store signs aren't *laws*. PCC employees are discriminating against my religious beliefs in violation of the Civil Rights Act of 1964.

PCC: We're not discriminating. We're following health guidelines. Wear a face covering or leave.

Benshoof: The health guidelines say a face shield does *nothing*. What happened to "My body, my choice"?

PCC: That doesn't apply to you—you're not a woman or transgender.

Benshoof: Officers, PCC employees are denying my civil rights in violation of RCW 9.91.010 and the Civil Rights Act of 1964.

Police: PCC trespassed you. Leave or we will arrest you.

Benshoof: Officers, you are conspiring with PCC employees in violation of RCW 9.40.040 Unlawful imprisonment, a class C felony, by unlawfully restraining me. Can I speak to a supervisory officer?

City Prosecutor: Mr. Benshoof, we're prosecuting you for criminal trespass.

Benshoof: You can't. Police never obtained criminal jurisdiction.

City Prosecutor: PCC trespassed you.

Benshoof: A *civil* trespass admonishment letter cannot confer *criminal* jurisdiction

to the police—Fourteenth Amendment equal protection.

City Prosecutor: PCC had a right to refuse you service.

Benshoof: Cite the *law* authorizing PCC to violate the Civil Rights Act.

City Prosecutor: We all know the saying, "No Shoes, No Shirt, No Service."

Benshoof: That's not a *law*.

City Prosecutor: PCC trespassed you.

Benshoof: If you don't stop retaliatory discrimination, I will sue you.

City Judge: If you don't come into court with a mask on, I'm issuing a warrant.

Benshoof: That's a violation of my right to appear under Wash. Const. Art. I § 22.

City Judge: You can wear a face shield instead of a mask.

Benshoof: A face shield does nothing. That's arbitrary and capricious.

City Judge: You disobeyed my order. I'm issuing a $10,000 warrant for your arrest.

Benshoof: If you don't stop retaliating, I will sue you in federal court.

City Judge: Make that $105,000 in warrants for Mr. Benshoof.

Benshoof: Federal courts must enjoin ongoing rights violations.

U.S. District Court: The City needs to enforce its trespass codes.

Benshoof: *Younger* abstention does not apply to retaliatory malicious prosecutions. I need a restraining order to prevent irreparable harm.

U.S. District Court: PCC trespassed you. The City has a "state interest" in maliciously prosecuting you to conceal its RICO Enterprise. but it is just a coincidence that Defendant Jenny Durkan, the former mayor of Seattle, used to be my boss.

Benshoof: There were nineteen errors of law and fact by district court.

Ninth Circuit: We don't have jurisdiction.

Benshoof: [Face palm]

STATEMENT OF THE CASE

A. Washington State Policies

Gubernatorial Covid-19 "emergency" proclamations, and Department of Health orders, created a quasi-medical apartheid state. RCW 43.06.010(12) authorized Governor Inslee pursuant to the existence of a "public disorder, disaster, energy emergency, or riot." "Covid-19" was not a "public disorder, disaster, energy emergency, or riot."

Inslee asserted that his proclamations were consistent with CDC "guidelines." Administrative agencies, such as the Department of Health, CDC and FDA, cannot delegate authority which they were not legislatively granted. Like the CDC, the "FDA is not a physician. It has authority to inform, announce, and apprise—but not to endorse, denounce, or advise."[1]

A gubernatorial mandate is not a law. Washington Constitution Article II § 18 states that style of laws of the states shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill. Article II § 22 states, "No bill shall become a law unless on its final passage the vote be taken by yeas and nays" and Article II § 32 states, "No bill shall become a law until the same shall have been signed by the presiding officers of each of the houses in open session, and under such rules as the legislature shall prescribe."

To ensure all people are protected when they are ***offered*** Emergency Use Authorization ("EUA") drugs, treatments, biologics, and ***devices***, Congress was

[1] *Apter, et al., v Dept. of Health and Human Services,* No. 22-40802, at 24 (5th Cir. Sept. 1, 2023)

explicit in that "[n]othing in this section [21 U.S.C. 360bbb-3] provides the Secretary any authority to *require* any person to carry out any activity that becomes lawful pursuant to an authorization under this section (21 U.S.C. 360bbb-3(l))." Face masks and face shields are EUA "devices."

Benshoof has a disability which prevents him being coerced to wear a face covering. The state mask orders, even if they had been enacted law, explicitly exempted people, including Benshoof, from the face covering "requirement."

Order of the Secretary of Health 20-03.1

> ***People Exempt from General Face Covering Requirement***
> *"People with a medical condition, mental health condition, developmental or cognitive condition, or disability that prevents wearing a face covering are* ***exempt*** *from the requirement to wear a face covering. This includes, but is not limited to, people with a medical condition for whom wearing a face covering could obstruct breathing".*

Notably absent from the secular exemptions was any mention of exemptions on religious grounds. Also absent was authorization for public accommodations or public officials to demand proof of exemption as a condition of entrance.

In 2020, doh.wa.gov stated, "[t]he use of face shields alone is currently viewed as *serving no purpose or providing any protection* from the transmission of COVID-19." (D.C. Dkt. #74 pg. 39) Washington Department of Labor & Industries stated, "Face shields alone *do not prevent the spread of COVID-19* and do not meet the face covering requirement." (D.C. Dkt. #74 pg. 41)

Even during a tuberculosis epidemic nothing "shall be construed to abridge the right of any person to rely *exclusively on spiritual means alone* through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church

or religious denomination..."[2] Benshoof hasn't been sick since a bout of food poisoning *circa* 2016, and Covid-19 had a *far* lower fatality rate than tuberculosis.

The Americans with Disabilities Act legally protected Benshoof from discrimination, even if Benshoof were a schoolteacher diagnosed with active contagious tuberculosis working in person in Seattle Public Schools. "Allowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of § 504, which is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others." *School Bd. of Nassau County v. Arline,* 480 U.S. 273, 284 (1987) PCC employees considered Benshoof impaired with COVID-19.

> "By amending the definition of "handicapped individual" to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." *Id.*

"The fact that some persons who have contagious diseases may pose a serious health threat to others under certain circumstances does not justify excluding from the coverage of the Act all persons with actual or perceived contagious diseases. Such exclusion would mean that those accused of being contagious would never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they were 'otherwise qualified.' Rather, they would be vulnerable to discrimination on the basis of mythology — precisely the type of injury Congress sought to prevent." *Id.,* at 285

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[2] *See* RCW 70.28.031(i)

B. PCC Policies

On September 6, 2020, PCC implemented its "No Mask, No Entry" policy at all fifteen store locations, asserting to Benshoof that PCC was "following CDC and Washington state guidelines." When PCC employees demanded that Benshoof wear a face covering to shop inside their stores he declined, stating that his religious beliefs proscribed him from being coerced to wear a face covering.

Benshoof also informed PCC that he has a disability which prevents him from being coerced to restrict his breathing or cover his face. Benshoof reminded PCC that the Americans with Disabilities Act and Washington Laws Against Discrimination prohibited PCC from denying equal access to Benshoof due to his disability. Benshoof reminded PCC employees that Washington mask orders exempted Benshoof.

PCC employees said that Benshoof could wear a face shield in lieu of a face mask. Benshoof informed PCC that the Department of Health—whose "guidelines" PCC was purportedly acting under to discriminate against Benshoof—explicitly informed the public that a face shield "is currently viewed as serving *no purpose* or providing any protection from the transmission of COVID-19."

C. City of Seattle Office of Civil Rights

While former Mayor Jenny Durkan publicly stated that everyone must wear a face covering, the Seattle Office for Civil Rights cautioned against discrimination.

> "In addition, it is critical to note that *there are valid reasons why some people can't wear face coverings – please do not discriminate*. If you experience or witness harassment or an act of bias, report it to the Seattle Office for Civil Rights Anti-Bias hotline at 206-233-7100. You can also report online at seattle.gov/reportbias. If it is an emergency, please call 9-1-1 immediately." *See* https://durkan.seattle.gov/2020/05

The City's discrimination warning did not define what reasons were considered valid as to why some people could not wear a face covering.

D. Seattle Police Department

1) Disparate Treatment

Seattle Police Department ("SPD") officers arrested Benshoof twice at Sprouts Farmers Market in September 2020. The second time Benshoof was arrested for "trespass" at Sprouts Farmers Market on September 15, 2020, it was Benshoof who had called 911 from the *parking lot* to report felony crimes perpetrated by SPD officers. In retaliation, the City set Benshoof's bail at ***$100,000.***[3] The City maliciously prosecuted Benshoof for over two years regarding the Sprouts arrests, then dismissed those charges with prejudice on February 24, 2023.[4]

SPD officers routinely ignored state and city mask mandates during the height of the pandemic and refused to obey direct orders from superiors to comply. As the Inspector General Report[5] stated, "it seemed procedurally unjust to sustain an insubordination allegation against an individual officer when others higher in the chain of command might not be wearing masks." Office of Police Accountability ("OPA") Director Andrew Myerberg "stated that no one in headquarters wore masks and that someone had sent OPA a photo of multiple lieutenants, captains, and chiefs celebrating an event at headquarters without any masks."

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[3] Seattle Municipal Court Nos. 656927
[4] Seattle Municipal Court Nos. 656877; 656927
[5] www.seattle.gov/documents/Departments/OIG/Other/Review_of%20Systemic_Non-Compliance_with_Masking_Requirements.pdf

2) Entrapment By Estoppel

On, or around, September 7, 2020, a King County Sheriff Deputy told Benshoof that grocery shopping sans face covering in a public accommodation was perfectly legal. Captain Ryan Abbot subsequently contacted the King County Prosecuting Attorney Office to verify that grocery shopping sans face covering was legal. Captain Abbot telephoned Benshoof and said that the King County attorneys told him, "Mr. Benshoof understands the law very well. (D.C. Dkt. #74 pg. 6 ¶ 15-16)

In March 2021 SPD Ofc. Stuart Parker responded to PCC Fremont and informed PCC staff that Benshoof was shopping lawfully: *SPD had no criminal jurisdiction*. (D.C. Dkt. #74 pg. 12 ¶ 51)

E. PCC – Modified Discrimination Tactics

After Ofc. Parker informed PCC that police had no criminal jurisdiction because Benshoof was complying with all "lawful conditions" of entry, the manager of PCC Fremont, Defendant Zachary Cook, sought a restraining order against Benshoof in April 2021 to keep Benshoof out of the store. King County District Court contradicted King County Sheriff Captain Abbot and Seattle Police Department Ofc. Parker, asserting that PCC's "No Mask, No Entry" sign was a "lawful condition of entry" barring Benshoof's entrance sans face covering.

Benshoof waited two years for the restraining order, and its renewal, to expire. Benshoof then telephoned PCC's corporate office on April 23, 2023, to confirm that he would not be subject to further harassment, threats, or discrimination by PCC employees. Respondent Freya Brier, PCC Vice President of Legal, refused to return

Benshoof's voicemail messages, and instead overnighted Benshoof a threat letter via FedEx to his home. (D.C. Dkt. #74 pg. 116)

F. City Attorney's Office

The City's *public facing policy* is to virtue signal its progressive Diversity, Equity & Inclusivity: The City's *actual practice* is conspiring with PCC to retaliate against Benshoof's firmly held religious beliefs through malicious prosecutions for over three years.[6]

In flagrant violation of Title II of the Civil Rights Act of 1964, the City continues to prosecute Benshoof to this day. In so doing, prosecutors continue to disregard the Supreme Court's holding that "our construction of the effect of the Civil Rights Act is more than statutory. It is required by the Supremacy Clause of the Constitution... Future state prosecutions under the Act being unconstitutional, and there being no saving clause in the Act itself, convictions for pre-enactment violations would be equally unconstitutional, and abatement necessarily follows."[7]

The Supreme Court affirmed what the Justices called an "axiomatic" principle of constitutional law and set forth this principle categorically, without qualification, and without dissent. The principle was this: government "may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish."[8] "A citizen has the right to be free from governmental action taken to retaliate against the citizen's exercise of First Amendment rights or to deter the

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[6] Seattle Municipal Court Nos. 656748; 656749
[7] *Hamm v. City of Rock Hill,* 379 U.S. 306, 315 (1964)
[8] *Norwood v. Harrison,* 413 U.S. 455, 465 (1973)

citizen from exercising those rights in the future."[9]

G. Seattle Municipal Court

Seattle Municipal Court judges implemented quasi-medical apartheid policies within the municipal courthouse beginning in 2020.

1) SMC No. 656748

City Judges asserted authority to violate Wash. Const. Art. I § 22 and deny Benshoof the right to appear in person for more than two years, threatened to hold a trial *in absentia* if Benshoof didn't wear a face covering, and issued arrest warrants when Benshoof appeared by WebEx. As with PCC employees, City judges were "following health guidelines" when they told Benshoof he could wear a face shield in lieu of a mask.

After the first $10,000 "failure to appear" warrant was issued in July of 2021, Benshoof obtained a "medical exemption letter" under threat, duress and coercion in September 2021. City judges disregarded the fact that RCW 49.60.040(7)(d) stated, "(d) Only for the purposes of qualifying for reasonable accommodation in *employment*, an impairment must be known or shown through an interactive process to exist in fact." By January 2022 Defendant Willie Gregory, presiding municipal judge, unilaterally declared that Benshoof's exemption letter had been invalidated by "Omicron" and that Benshoof posed a direct health threat.

From Fall of 2020 until Summer of 2023, Benshoof appeared for every hearing in SMC No. 656748. However, in 2023, City judges began denying Benshoof the

[9] *Sloman v. Tadlock,* 21 F.3d. 1462, 1469-70 (9th Cir. 1994)

ability to file any motion whatsoever. It became clear to Benshoof that City judges were going to continue perpetrating retaliatory crimes against Benshoof unless he sought redress in federal court. On July 28, 2023, a $10,000 failure to appear warrant was issued, and six weeks later Benshoof filed suit in U.S. District Court. "[S]tate-compelled segregation in a court of justice is a manifest violation of the States duty to deny no one the equal protection of its laws." *Johnson v. Virginia,* 373 US 61 (1963)

2) SMC NO. 656749

Except for the September 2021 trial in SMC No. 656749, Benshoof wasn't allowed into any courtroom. At the trial, Benshoof was isolated next to the bar, prohibited from standing or crossing the well to question witnesses, and prohibited from taking the stand.

Benshoof was denied a representative jury to hear the matter in controversy; namely, were PCC mask policies lawful requirements? When Benshoof asked Judge Lynch how many jurors with disabilities or religious beliefs precluding their wearing a mask had entered a courtroom in the previous *eighteen months*, Judge Lynch replied, "*None.*" In other words, the City only allowed jurors who did not object to coerced mask wearing to hear testimony, including Benshoof's trial.

Under the bright glare of the City's gaslighting, it was Benshoof's fault that he couldn't use the video monitor. If Benshoof had put on a face covering, he would have been allowed to walk across the well and show the jury exculpatory video evidence of: (1) PCC manager Tyler Goslin requesting that Benshoof leave payment ***away*** from the check-out stands; and (2) Benshoof leaving payment ***away*** from the check-out

area and ***outside the view*** of the security cameras. Like an M.C. Escher drawing that can only exist in two dimensions, Benshoof was to blame for violating his own right to due process. Obviously, this prevented Benshoof "from presenting all of his case to the court." *United States v. Throckmorton*, 98 U.S. 61, 66 (1878).

The jury found Benshoof guilty of trespassing and shoplifting a bag of groceries. Two-and-one-half years later, Benshoof has yet to be sentenced. Therefore, he has been unable to appeal the malicious prosecution.

3) City of Seattle RCW 35.20.270(1)

The City's "trespass" prosecutions of Benshoof are malicious[10] and since 2020 the City has failed to evidence legal service of process under RCW 35.20.270(1), rendering the municipal court without *in personam* jurisdiction. Municipal judges have simply ignored Benshoof's dispositive written motions and *viva voce* objections by special appearance.

In similar disregard for the law, the City has proceeded without subject matter jurisdiction to maliciously prosecute Benshoof, despite Seattle Municipal Court's "independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it."[11]

H. U.S. District Court

Without any factual or legal basis, district court inverted the Supremacy Clause by tautologically claiming that Benshoof had been "trespassed." By falsely inferring Benshoof was *criminally* trespassed, district court claimed Benshoof failed

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[10] RCW 9.62.010 Malicious prosecution is a gross misdemeanor.
[11] *Hertz Corp. v. Friend,* 559 U.S. 77, 94 (2010)

to "establish that he is likely to succeed on the merits." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) By implying that Benshoof was a criminal trespasser, district court reversed victim and offender; therefore, Benshoof could not possibly be suffering irreparable harm.

With these two parlor tricks, district court declared, "Because Benshoof does not show irreparable harm or a likelihood of success on the merits—required elements for the issuance of a TRO—the Court need not analyze the remaining *Winter* factors. (D.C. Dkt. #92 pg. 7 ¶ 3)

The district court TRO dismissal did not simply lack support in inferences that were drawn from facts in the record, nor was the dismissal merely illogical and implausible. Unless Congress secretly amended the Civil Rights Act of 1964, the district court dismissal was a legal *impossibility.*

I. Ninth Circuit Court of Appeals

Benshoof cited *Service Employees Intern. Union v. National Union of Healthcare Workers,* 598 F.3d 1061, 1067 (9th Cir. 2010) "We conclude that this TRO is an appealable interlocutory order and that this appeal is not moot."

Benshoof detailed nineteen errors of fact and law. ""Interlocutory orders of the district courts of the United States ... granting, continuing, modifying, refusing or dissolving injunctions" are immediately appealable. 28 U.S.C. § 1292(a)(1)" *Maryville Baptist Church, Inc. v. Beshear,* 957 F.3d 610, 612 (6th Cir. 2020)

Despite the district court denying both Benshoof's preliminary injunction (D.C. Dkt. #38) and temporary restraining order (Dkt. #74), the Ninth Circuit claimed that

the district court's denial was *not* "tantamount to the denial of a preliminary injunction." (9th Cir. No. 24-952; Docket Entry 15, pg. 1 § 1)

REASONS FOR GRANTING THE APPLICATION

I. 28 U.S.C. § 1651

The All Writs Act, 28 U.S.C. § 1651(a), authorizes all courts established by an Act of Congress to issue an injunction when (1) the circumstances presented are "critical and exigent"; (2) the legal rights at issue are "indisputably clear"; and (3) injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citations and alterations omitted). The Court also has discretion to issue an injunction "based on all the circumstances of the case," without its order "be[ing] construed as an expression of the Court's views on the merits" of the underlying claim. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014)

A. District Court Errors of Law

1) Trespass Never Occurred

The premises under which district court denied Benshoof's injunction and TRO were that "PCC 'trespassed' Benshoof from all store locations" (D.C. Dkt. #92 pg. 3 ¶ 2) and therefore the City has a state interest in "the city's ability to enforce local trespass laws." (D.C. Dkt. #38, pg. 15 ¶ 3)

"PCC employees falsely asserted that their "No Mask No Entry" policy was a lawful condition of entry. SPD officers enforced PCC's policy as if it was a criminal

law, yet it was a *civil* dispute. The concerted parallel acts by PCC and SPD were unconstitutional: they imposed no duty upon Benshoof." (D.C. Dkt. #74 pg. 17 ¶ 71)

> "An unconstitutional act is not a law; it confers no rights; it imposes no duties it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed."
> *Norton v. Shelby County*, 118 US 425 (1886)

"To the extent Benshoof argues his present request is different from his previous requests, he is arguing semantics. Even if the wording of his requests are slightly different, the same reasoning articulated by the Court in denying his previous requests would apply—the relief he seeks is barred by *Younger v. Harris*, 401 U.S. 37 (1971). *See* Dkt. Nos. 29 at 8-9; 38 at 15." (D.C. Dkt. #92 pg. 4 ¶ 1)

> Pub. L. 88-352 Title II – Injunctive Relief Against Discrimination in Places of Public Accommodation - § 201(a) states "[a]ll persons shall be entitled to the full an equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion or national origin.

> "Under the Civil Rights Act, *petitioners' conduct could not be the subject of trespass prosecutions*, federal or state, if it had occurred after the enactment of the statute." "No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202."
> *Hamm v. City of Rock Hill,* 379 U.S. 306, 310-311 (1964)

It is an affirmative defense to criminal trespass that the store was "open to members of the public and [Benshoof] complied with all lawful conditions imposed on access to or remaining in the premises." (D.C. Dkt. #74 pg. 19 ¶ 78)

No one has claimed that Benshoof entered PCC stores when they weren't "open

to members of the public." Criminal trespass requires *mens rea*, that a person "*knowingly* enters or remains *unlawfully* in a building." *See* RCW 9A.52.070; SMC 12A.08.040(A). Benshoof did not knowingly enter PCC unlawfully. *See Rehaif v. United States,* 139 S.Ct. 2191 (2019), *Elonis v. United States,* 575 U.S. 723 (2015

2) Arbitrary & Capricious Policy

Through the equal protection clause of the Fourteenth Amendment, Respondents were prohibited from violating First Amendment prohibitions against denying Benshoof's free exercise of his religious beliefs. (D.C. Dkt. #74 pg. 18 ¶ 73)

> "There can be no question that the challenged restrictions, if enforced, will cause irreparable harm. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns,* 427 U. S. 347, 373 (1976) (plurality opinion). *Roman Catholic Diocese v. Cuomo,* 592 U.S. (2020)

In 2020, doh.wa.gov stated, "[t]he use of *face shields* alone is currently viewed as serving no purpose or providing any protection from the transmission of COVID-19." Respondents knew or should have known that face covering policies of the City and PCC were arbitrary and capricious, as the Department of Labor & Industries stated, "Face shields alone do not prevent the spread of COVID-19 and do not meet the face covering requirement." (D.C. Dkt. #74 pg. 6 ¶ 15)

Any judge should know that PCC's policy was arbitrary and capricious to permit interchangeability of face masks and face shields when the guidelines PCC purportedly followed stated that *face shields serve no purpose.*

3) No Grave or Immediate Danger Existed

Counsel for PCC claimed that Benshoof "not wearing a face covering was a direct threat to the health and safety of others."

"Respondents never demonstrated a grave and immediate danger [posed] by Benshoof exposing his face. It's preposterous that educated adults suddenly believed in 2020 that a healthy person, such as Benshoof, could make other people sick simply by walking around in a grocery store with his face exposed." (D.C. Dkt. #74 pg. 18 ¶ 74) While Respondents may have *believed* their own irrational fears, Benshoof's rights did not abruptly end where the irrational fears of Respondents began.

> "[F]reedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."
> *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943)

5) No Lawful Order – Void for Vagueness

Just like every other member of the public, Benshoof had license and privilege to buy groceries at PCC. (D.C. Dkt. #74 pg. 20 ¶ 82)

> "(1) A person, who, regardless of his intent, enters or remains in or upon premises which are at the time open *731 to the public does so with license and privilege *unless he defies a lawful order* not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person."
> *City of Seattle v. Rice,* 93 Wn.2d 728, 730 (1980)

Benshoof complied with all lawful conditions of entry to PCC, despite being subjected to screamed vulgarities, threats, and having his shopping cart and personal shopping bags stolen by employees. (D.C. Dkt. #74 pg. 20 ¶ 83)

> "The entire question here is whether the words "lawful order" are sufficiently specific to satisfy the due process requirements of the void for vagueness doctrine. The due process clause of the Fourteenth Amendment requires

> specificity in penal statutes and ordinances for two independent reasons. First, citizens must have fair notice of what conduct is proscribed. *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 83 L. Ed. 888, 59 S. Ct. 618 (1939). Second, explicit standards are necessary in order to guard against arbitrary enforcement of the laws." *Papachristou v. Jacksonville,* 405 U.S. 156, 168-71, 31 L. Ed. 2d 110, 92 S. Ct. 839 (1972)."
> *City of Seattle v. Rice,* 93 Wn.2d 728, 731 (1980)

6) Entrapment By Estoppel

After a King County Sheriff deputy confirmed to Benshoof in early September 2020 that entering grocery stores to shop for groceries sans face covering did not violate any lawful condition of entry, *supra,* pg. 9 ¶ 1, the City was barred from convicting Benshoof of trespassing for shopping sans face covering. Entrapment by estoppel applies when an official tells a defendant that certain conduct is legal and the defendant believes that official. *United States v. Hedges*, 912 F.2d 1397 (11th Cir. 1990) (D.C. Dkt. #74 pg. 21 ¶ 87)

SPD Ofc. Stuart Parker #8484 affirmed to Benshoof in PCC Fremont that Benshoof was not violating any lawful condition of entry by shopping in PCC sans face covering. (D.C. Dkt. #74 pg. 22 ¶ 89) See *United States v. Tallmadge*, 829 F.2d 767 (9th Cir. 1987)

7) No Municipal Jurisdiction

District court asserted the ongoing municipal court prosecutions are valid, despite proof that: (1) the City violated RCW 35.20.270(1), proceeding without personal jurisdiction; (2) City police acted without criminal jurisdiction; and (3) prosecutors and judges proceeded without subject matter jurisdiction.

Benshoof provided *proof*—including acknowledgement from City prosecutor

Defendant Katrina Outland—that the City violates RCW 35.20.270(1) as a matter of policy to unlawfully assert personal jurisdiction. (D.C. Dkt. #74 pg. 151-152)

Courts have an "independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it." *Hertz Corp. v. Friend,* 559 U.S. 77, 94 (2010)

"Nonforcible attempts to gain admittance to or remain in establishments covered by the Act, are immunized from prosecution, for the statute speaks of exercising or attempting to exercise a "right or privilege" secured by its earlier provisions." *Hamm v. City of Rock Hill,* 379 U.S. 306, 311 (1964)

Beginning with his petition for an injunction on September 29, 2023, (D.C. Dkt. #15) Benshoof repeatedly pled that the Civil Rights Act, and that *Hamm v. City of Rock Hill,* 379 U.S. 306, 310-311 (1964), unequivocally *prohibited* the City's trespass prosecutions. The legal obligations imposed by the Civil Rights Act are undeniable. "If the law be constitutional . . . . I know of no court which can contest its obligation." *Id.* at 312.

8) No State Interests

District court claimed the City's prosecution of Benshoof "implicate local interests because the charges concern the City's ability to enforce local trespass laws." (D.C. Dkt. #38 pg. 15 ¶ 2-3)

There is no public interest in allowing, enabling, or facilitating the ongoing malicious prosecutions of Benshoof. The City and PCC are conspiring to indemnify their perpetration of denial of civil rights (RCW 9.91.010) and unlawful imprisonment

(RCW 9A.40.040) by falsely alleging that Defendant Freya Bier's *civil* "trespass notice" conferred *criminal* jurisdiction to City officials. (D.C. Dkt. #74 pg. 43)

9) Civil vs. Criminal

District court claimed PCC "trespassed" Benshoof from all store locations. (D.C. Dkt. #92 pg. 3 ¶ 2)

Respondent Brier's one page *civil* "trespass notice" was notice of a *potential* civil claim that PCC *could have* initiated in a civil action against Benshoof with summons and complaint. The piece of paper had no more legal authority than Benshoof's *civil* Notice of Claim served on Defendant Zachary Cook. (D.C. Dkt. #74 pg. 118-149) Unless PCC or Benshoof initiated a *civil* action in state or federal court pursuant to their respective notices, the documents were just paper and ink.

Respondent Brier threatened Benshoof with unlawful arrest on April 26, 2023, by overnighting a letter to Benshoof's home. Counsel for PCC admitted the *ongoing* discrimination against Benshoof. "PCC does not *want* to conduct business with him. *That is the reason* he was trespassed from the stores." (D.C. Dkt. #83 pg. 15 ¶ 1)

Benshoof shopped at PCC stores throughout Puget Sound for more than thirty years without incident. It wasn't until Benshoof's religious beliefs were deemed dangerously heretical by PCC employees in late Summer of 2020 that Benshoof was subjected to hostility and discriminatory segregation.

CLAIM: "The requested relief would effectively disrupt and invalidate the municipal court proceedings even though Benshoof has not established bad faith, harassment, or extraordinary circumstances that would justify the Court setting

aside abstention under the *Younger* abstention doctrine." (D.C. Dkt. #38 pg. 15 ¶ 3)

Even if Benshoof had actually trespassed and stolen the $100 worth of groceries falsely alleged by Respondents, $105,000 in warrants undeniably constitutes "bad faith, harassment, ***and*** extraordinary circumstances that would justify the Court setting aside abstention under the *Younger* abstention doctrine" and shocks the conscience in its unprecedented violation of the Eighth Amendment.

After more than two years of judges denying Benshoof's right to appear in person, in violation of Wash. Const. Art. I, § 22, they began demanding that Benshoof appear in person so that judges could have Benshoof arrested by court marshals: they intended to indefinitely and unlawfully imprison Benshoof. It was a Faustian bargain: judges would stop violating Wash. Const. Art. I, § 22 and let Benshoof appear in court to argue his defense, but only if Benshoof first forsook his liberty. $25,000 warrant #990437507 was issued for Benshoof's arrest on July 28, 2023, in SMC No. 656748. (D.C. Dkt. #74 pg. 13 ¶ 53) To date, a total of $60,000 in warrants have been issued in SMC No. 656748 alone.

On September 28, 2023, three weeks after Benshoof filed suit against Respondents in WAWD No. 2:23-cv-1392-JNW, the City issued $20,000 warrant #990438446 for Benshoof's arrest in SMC No. 656749. To date, a total of $45,000 in warrants have been issued in this case alone.

10) Denial of Due Process

CLAIM: "Benshoof does not allege the municipal court forum prevented him from raising his constitutional and jurisdictional claims." (D.C. Dkt. #38 pg. 15 ¶ 3)

Benshoof cannot bring motion before Seattle Municipal Court. Benshoof tried repeatedly, and numerous Catch-22 barriers have been erected: (1) Benshoof's public defender, Mr. Pirani, refused to file any motions raising constitutional or jurisdictional challenges; (2) Mr. Pirani refused to withdraw as counsel; (3) judges refused to hear Benshoof's *pro se* Marsden motion so long as Mr. Pirani remained counsel of record; (4) judges refuse to hear Benshoof's motion to dismiss unless Benshoof first subjects himself to unlawful imprisonment. (D.C. Dkt. #74 pg. 13 ¶ 54)

City prosecutors refused to provide Benshoof exculpatory evidence in SMC No. 656749, preventing pre-trial review and trial presentation of PCC surveillance video showing that Benshoof left payment away from the checkout stands. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963)

An appeal of Benshoof's September 2021 conviction in SMC No. 656749 has been unavailable to Benshoof for over two years. Unless Benshoof submits to unlawful, indefinite imprisonment, the City will not sentence Benshoof.

11) Joint Action Criminal Conspiracy

CLAIM: "Benshoof did not plead a prima facie claim of § 1983 conspiracy between the City and PCC, only "conclusory allegations." (D.C. Dkt. #92 pg. 6 ¶ 3)

Benshoof pleaded parallel state and federal law violations by employees of PCC and the City. "Well-pleaded, nonconclusory factual allegations of parallel behavior"

gives "rise to a 'plausible suggestion of conspiracy." *Ashcroft v. Iqbal,* 556 U.S. 662, 680 (2009) A conspiracy between the State and a private party to violate another's constitutional rights may satisfy the "joint action" test for finding the private party liable as a "state actor" under § 1983. 42 U.S.C.A. § 1983. *Brunette v. Humane Soc'y of Ventura Cnty.,* 294 F.3d 1205 (9th Cir. 2002), as amended on denial of reh'g and reh'g en banc (Aug. 23, 2002)

CLAIM: "Benshoof brings 42 U.S.C. § 1983 claims against PCC, a private party. Benshoof alleges the second test—joint action. He makes conclusory allegations of conspiracy between PCC employees—Cook and Brier—and state officials." (D.C. Dkt. #92 pg. 5 ¶ 2-3)

PCC employees falsely claimed their "No Mask, No Entry" sign was a "lawful condition of entry." When Benshoof explained to SPD officers that *criminal* trespass required Benshoof being in PCC *unlawfully,* Benshoof demanded that officers cite the *criminal law* which Benshoof had allegedly violated. Officers pointed to PCC's "No Mask, No Entry" sign, stating that it was "the law" which precluded Benshoof from entering PCC without a face covering and authorized officers to arrest Benshoof. That is the epitome of *joint action.*

12) Proximate Cause

Personal participation is not the only predicate for § 1983 liability. Respondent Brier wrote the October 2020 "trespass admonishment" which was given to police, claiming that the one-page notice granted police criminal jurisdiction. PCC employees repeatedly called 911 to have Benshoof *unlawfully* imprisoned pursuant to this ruse.

Anyone who "causes" any citizen to be subjected to a constitutional deprivation is also liable. The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 915 (9th Cir. 2012)

"In a § 1983 action, the plaintiff must also demonstrate that the defendant's conduct was the actionable cause of the claimed injury." *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). "To meet this causation requirement, the plaintiff must establish both causation-in-fact and proximate causation." *Id.*

> The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial." *Ex parte Virginia,* 100 U.S. at 100 U. S. 346. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in § 1983 actions by expressly authorizing a "suit in equity" as one of the means of redress. And this Court long ago recognized that federal injunctive relief against a state court proceeding can, in some circumstances, be essential to prevent great, immediate, and irreparable loss of a person's constitutional rights.
> *Ex parte Young,* 209 U. S. 123; *cf. Truax v. Raich,* 239 U. S. 33; *Dombrowski v. Pfister,* 380 U. S. 479. *Mitchum v. Foster,* 407 U.S. 225, 242 (1972)

It is indisputable that Brier and PCC employees set in motion a series of acts by which they expected: (1) the SPD officers to remove Benshoof from PCC stores; (2) City attorneys to prosecute Benshoof; and (3) City judges to sentence Benshoof to jail. In *Reynaga Hernandez v. Skinner,* 969 F.3d 930, 941-42 (9th Cir. 2020), the Ninth Circuit discussed, for the first time, the minimum level of involvement needed for § 1983 liability under the integral-participant doctrine. An actor may be deemed to

have caused a constitutional violation under the "integral-participant doctrine" if the defendant "set in motion a series of acts by others which the defendant knew or reasonably should have known would cause others to inflict the constitutional injury." *Peck v. Montoya,* 51 F.4th 877, 891 (9th Cir. 2022)

13) Irreparable Harm

PCC's *ongoing* violations of the Civil Rights Act are retaliatory discrimination against Plaintiff's religious beliefs *and* violate the First Amendment prohibition against denying Benshoof's right to associate with PCC stores, employees, goods, and services. Respondent Brier's letter, (D.C. Dkt. #74 pg. 116) which she overnighted to Benshoof's home, threatened Benshoof with unlawful arrest by City police, malicious prosecution by City prosecutors, and indefinite imprisonment by City judges. The immediate and ongoing threat of the foregoing is intended to intimidate Benshoof and prevent him from entering any of PCC's fifteen Puget Sound locations.

City police, prosecutors, and judges pose a direct and immediate threat of irreparable harm to Benshoof pursuant to Defendant Brier's threat letter, and ongoing parallel acts by City prosecutors and judges in SMC Nos. 656748; 656749.

II. The Violations of Applicant's Free Exercise Rights and Right of Association Are Indisputably Clear, And The District Court's Abuse of Discretion Would Negate The Civil Rights Act.

Governor Inslee could not enact laws, nor could he delegate law making authority that he lacked. The nondelegation doctrine constrains a legislature's ability to delegate its legislative authority to executive agencies. "Congress is not permitted

to abdicate or to transfer to others the essential legislative functions with which it is thus vested." *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495 (1935).

> "[F]reedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."
> *West Virginia State Bd. of Educ. v. Barnette,* 319 U.S. 624, 639 (1943)

Respondents had no compelling reason in 2020 to deny Benshoof full and equal enjoyment of PCC's goods and services. PCC's arbitrary and capricious face covering policy could not, based upon Department of Health guidelines, prevent grave and immediate dangers, nor could the City assert criminal jurisdiction to enforce PCC's policy. "Nor may the government 'act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices.'" *Fellowship of Christian Athletes,* 2023 WL 5946036, at *38 (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n,* 138 S.Ct. 1719, 1731 (2018)).

"[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection,." *Fulton* v. City of Philadelphia, 141 S.Ct. at 1876 (quoting *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)).

Therefore, Respondents' *ongoing* pretexts for discriminating against Benshoof are without lawful foundation, jurisdiction, or authority. Respondents' parallel and concerted acts, past *and present,* have denied and are denying Benshoof full and equal enjoyment of PCC's goods and services in violation of the Civil Rights Act.

To avoid violating the Constitution, "the government must demonstrate that 'a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.'" *Id.* (quoting *Church of Lukumi Babalu Aye v. City of Hialeah*, 520, 546 (1993)

A. On Its Face, Respondents Parallel Acts Targeted Applicant For Religious Discrimination And Retaliation Such That Strict Scrutiny Plainly Applies.

Under the First Amendment, a plaintiff makes out his case if he shows "that a government entity has burdened [his] sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Waln v. Dysart Sch. Dist.*,54 F.4th 1152, 1159 (9th Cir. 2022) (quoting *Kennedy v. Bremerton Sch. Dist.*,142 S.Ct. 2407, 2422 (2022)). General applicability requires, among other things, that the laws be enforced in an even-handed manner. *Id.* (citations omitted). "A government policy will fail the general applicability requirement if it 'prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way,' or if it provides 'a mechanism for individualized exemptions.' Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny." *Kennedy,*142 S.Ct. at 2422 (citations omitted).

Policy and enforcement are subject to strict scrutiny under each of three independent tests.

General Applicability. Those willing and able to wear face coverings were treated favorably by Respondents, but Benshoof was targeted with retaliation for not submitting to the arbitrary and capricious face shield option. The Washington

Department of Health made exemptions for medical reasons, but not for religious reasons. This implicitly targeted religious beliefs for disparate treatment by omission. The text of the mask order expressly exempted people for secular reasons, while omitting exemptions for religious reasons. This makes clear that the mask order was neither neutral nor generally applicable. *Lukumi*, 508 U.S. at 533.

"Because the challenged restrictions are not "neutral" and of "general applicability," they must satisfy "strict scrutiny," and this means that they must be "narrowly tailored" to serve a "compelling" state interest. *Church of Lukumi* , 508 U.S. at 546, 113 S.Ct. 2217." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020)

Glaring inconsistencies between the treatment of secular reason and religious reasons took the state mask order outside the safe harbor for generally applicable laws. This "double standard" was not a neutral or generally applicable one and needed to "be 'narrowly tailored' to serve a 'compelling' state interest." *Roman Catholic Diocese v. Cuomo,* 141 S.Ct. 63, 67 (2020)

> Claimed discretion to protect public health and safety is subject to the condition that "no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument."
> *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

Individual Exemptions. Second, the disparate treatment of secular reasons confirmed that the health order unconstitutionally targeted religion. City police officers were given individual employment exemptions, yet most officers treated Benshoof as a criminal for stating his disability exemption. In practice, City police

officers refused to wear face coverings with impunity. "As a rule of thumb, the more exceptions to a prohibition, the less likely it will count as a generally applicable, nondiscriminatory law." *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 614 (6th Cir. 2020) Indeed, an "exception-ridden policy takes on the appearance and reality of a system of individualized exemptions, the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny." *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012).

Washington State made a "value judgment" that certain secular exemptions were valid, whereas religious exemptions were omitted.

PCC made a "value judgement" that if Benshoof virtue signaled by wearing a an arbitrary and capricious face shield, his action would show sufficient obedience to allow Benshoof to shop inside PCC stores. In other words, PCC valued the appearance of obedience while disregarding the fact face shields *do nothing*. PCC continues to make a value judgment by denying Benshoof the enjoyment of their goods and services in retaliation for Benshoof's beliefs previously proscribing his obedient submission to PCC's demands.

The City made a "value judgement" that SPD Officers were too important to arrest, charge and prosecute, even when disobeying orders from superior officers, but Benshoof could be made an example of. Moreover, the City is *still* making an example of Benshoof over three years later. The City's message is clear: anyone whose religious principles require ensuring the equal protection of the laws through petitions for redress of their grievances will be targeted for retaliation.

Official Statements. The allegedly compelling interest justifying conspiratorial, parallel acts by Respondents to deny Benshoof the full and equal enjoyment of PCC's goods and services was contravened by official statements. Governor Inslee's proclamations incorporated the Department of Health Orders, which explicitly exempted Benshoof from PCC's face covering policy.

The Department of Health informed the public that face shields were "viewed as serving no purpose or providing any protection from the transmission of COVID-19." (D.C. Dkt. #74 pg. 5 ¶ 12; pg. 39) The Department of Labor & Industries informed employers statewide that "face shields do not prevent the spread of COVID-19 and do not meet the face covering requirement." (D.C. Dkt. #74 pg. 5 ¶ 12; pg. 41) Defendant Jenny Durkan warned the public *not to discriminate*. (D.C. Dkt. #74 pg. 5 ¶ 14)

Despite the foregoing, PCC employees averred that they were following health guidelines and definitely *not* violating the Civil Rights Act. Equally disingenuous, PCC now asserts that threatening Benshoof with arrest if he enters any of PCC's fifteen stores is *not* discriminatory.

B. On Its Face, Prior CITY Conduct Targeted Applicant For Religious Discrimination And Ongoing Retaliation Cannot Survive Strict Scrutiny.

The fact that SPD Officers were not subject to harassment, threats, arrest, imprisonment, nor prosecution, yet Benshoof was, shows that the City's practices were not the least restrictive means of combatting the spread of COVID-19. If many SPD officers could be trusted to operate safely without being threatened, so, too, could

Benshoof. *See First Pentecostal Church of Holly Springs v. City of Holly Springs*, 959 F.3d 669, 670-71 (5th Cir. 2020) (Willett, J., concurring in grant of injunction pending appeal) ("Singling out [Benshoof for his religious beliefs]—and *only* [Benshoof], it seems—cannot possibly be squared with the First Amendment." (emphasis in original)); *see also S. Bay*, 140 S. Ct. at 1615.

C. On Its Face, Current PCC Conduct Targets Applicant For Religious Discrimination And Retaliation

PCC's ongoing policy of denying Benshoof service at all fifteen of their stores is obviously a direct and proximate result of Benshoof acting in accordance with his religious beliefs by: (1) shopping sans face covering in 2020-2021 (D.C. Dkt. #74 pg. 4 ¶ 8); (2) repeatedly calling 911 to report criminal law violations by PCC employees (D.C. Dkt. #47 pg. 40 ¶ 185; pg. 41 ¶ 189; Dkt. #74 pg. 10 ¶ 37); and (3) petitioning for redress of his grievances in federal court. (WAWD No. 2:23-cv-1392-JNW)

Since Respondent Brier overnighted a threat letter to Benshoof on April 26, 2023, Benshoof has been denied his right of association with PCC goods and services under threat of immediate arrest by SPD officers and indefinite imprisonment. (D.C. Dkt. #74 pg. 16 ¶ 64-65).

PCC has no compelling interest to deny Benshoof the full and equal enjoyment of their goods and services simply because "PCC does not *want* to conduct business with him." (D.C. Dkt. #83 pg. 15 ¶ 1) The Civil Rights Act prohibits PCC from asserting a "right to conduct business with whom it *wishes* and to exclude" (D.C. Dkt. #83 pg. 15 ¶ 2) Benshoof because his beliefs are different than employees of PCC.

D. On Its Face, Respondents Current Conduct Targets Applicant For Religious Discrimination And Retaliation

Benshoof's devout spiritual commitment to facts, to holding liars and criminals accountable, to ensuring equal protection under the law for *all* people, and to seeking redress for violations of the foregoing, has run him afoul of City and PCC employees who believe that they are above the law.

City and PCC employees have painted themselves into a corner with over three years of their red-handed brush strokes. Respondents have conspired in parallel acts to portray Benshoof as the aggressor in order to conceal the fact that it has actually been Respondents who have violated state and federal laws to retaliate against Benshoof.

III. Violations of the Eighth Amendment Are Indisputably Clear, And the Lower Courts' Abuses of Discretion Cannot Withstand Scrutiny.

The ongoing punishments inflicted upon Benshoof by Respondents are cruel, disproportionate, without just cause, and absent any compelling interest. As a corollary, what has happened is no less absurdly unconstitutional than if the following events occurred: (1) Respondents converted to Islam and decreed all Seattleites must wear burqas to protect others from invisible demonic forces under a "public health" claim of compelling governmental interest; (2) City police prohibited Christians, such as Benshoof, from entering public accommodations and courthouses sans burqa by threatening Christians with unlawful imprisonment; (3) Respondents declared Benshoof a "credible threat" because of Benshoof's heterodox beliefs, thereby criminalizing Benshoof's grocery shopping; and (4) City prosecutors, without

jurisdiction, prosecuted Benshoof for over three years.

A. Excessive Fines

By ignoring the fact that police never had criminal jurisdiction to accuse Benshoof of criminal trespass, the City established the pretext for its malicious prosecutions of Petitioner. The City's issuance of $105,000 in "failure to appear" warrants in SMC Nos. 656748; 656749 to indefinitely imprison Benshoof under color of law illustrates the City's barbaric retaliation, shocks the conscience, and violates the Eighth Amendment.

B. Bill Of Pains and Penalties

In Benshoof's *Monty Pythonesque*[12] burqa corollary, *supra*, pg. 33 ¶3, illustrating the sadistic, retaliatory measures which self-anointed paragons of diversity, equity, and inclusivity supported against Benshoof's class, Respondents effectively required Benshoof to swear a loyalty oath, converting to ritualized orthodox burqa wearing or have his rights abrogated.[13] The Supreme Court held a provision implemented to punish an individual or group of individuals by excluding them from their chosen vocation without a judicial trial as an unconstitutional bill of pains and penalties.[14] Forcing Petitioner to choose between his right to express his spiritual faith and his right to associate with PCC violates the First Amendment[15] and U.S. Constitution Article I, § 10, Clause 3.

IV. Violations of the Fourteenth Amendment Due Process Clause Are

[12] *Monte Python's Life of Brian,* Satirical examination of state-sponsored prejudices and oppressive discrimination.
[13] Rasmussen Reports Poll: COVID-19: Democratic Voters Support Harsh Measures Against Unvaccinated - Rasmussen Reports®
[14] *Cummings v. Missouri,* 71 U.S. 277 (1867)
[15] *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943)

Indisputably Clear, And the Lower Courts' Abuses of Discretion Cannot Withstand Scrutiny.

A. Absence of Jurisdiction

The City's policy of violating RCW 35.20.270(1) to serve criminal summons means that personal jurisdiction over Benshoof was never obtained by Seattle Municipal Court.

In *Hamm v. City of Rock Hill,* 379 U.S. 306 (1964) the Court held that "[u]nder the Civil Rights Act, petitioner's conduct *could not be the subject of trespass prosecutions*, federal or state, if it had occurred after the enactment of the statute." *Id.* at 310. It is indisputable that Benshoof's shopping occurred after 1964.

B. Entrapment by Estoppel

Upon the foregoing, the City was prohibited from prosecuting Benshoof. Entrapment by estoppel applies when an official tells a defendant that certain conduct is legal and the defendant believes that official. *United States v. Hedges,* 912 F.2d 1397 (11th Cir.1990). By the doctrine of entrapment by estoppel, confirmation by Seattle police and King County deputies that Benshoof was complying with all lawful conditions of entrance proscribed the City's prosecutions of Benshoof. *United States v. Tallmadge,* 829 F.2d 767 (9th Cir. 1987) (D.C. Dkt. #74 pg. 6 ¶ 16-17)

C. Due Process Right To Appear

City prosecutors and judges acted in concert to deny Benshoof's right to appear in courtrooms for more than two years, in violation of Wash. Const. Art I § 22.

D. Spoliation of Evidence

Not only did City prosecutors violate the holding of *Brady v. Maryland* by

withholding exculpatory evidence from Benshoof and the jury, PCC has most likely failed to retain its store surveillance video showing that Benshoof left payment inside the store on October 27, 2020.

E. Kangaroo Municipal Court

The Due Process Clause entitles a person to an impartial and disinterested tribunal. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of due process: the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process.[16]

City prosecutors and judges violated due process elements of a fair hearing: (1) the right to examine opposing evidence; and (2) the defendant's right to present exculpatory evidence. An esteemed judge, Henry J. Friendly, wrote, "There can likewise be no fair dispute over the right to know the nature of the evidence on which the administrator relies."[17] This

Respondents' ends justified their means. While City prosecutors and judges deemed Benshoof's beliefs offensive to their own hypocritical standards, the Supreme Court has held prohibitions against annoying conduct as void for vagueness.[18]

V. Violations of the Fourteenth Amendment Equal Protection Clause Are Indisputably Clear, And the Lower Courts' Abuses of Discretion Cannot Withstand Scrutiny.

The City Attorney's Office violation of the Equal Protection Clause of the

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[16] *See Carey v. Piphus*, 435 U.S. 247, 259–262, 266–267, 98 S.Ct. 1042, 1043, 1050–1052, 1053, 1054, 55 L.Ed.2d 252, (1978)
[17] *Some Kind of Hearing,* Univ. Penn. Law Review Vol. 123:1267 at 1283, Henry J. Friendly (1975)
[18] *Johnon v. United States*, 576 U.S. 591, 602-3, 135 S. Ct. 2551, 2561, 192 L. Ed. 2d 569 (2015)

Fourteenth Amendment is most glaringly revealed by the disparate treatment between police officers and Benshoof. It makes a hypocritical mockery of Diversity, Equity, and Inclusivity.

VI. Bad Faith, Harassment, and Extraordinary Due Process Violations Preventing Applicant From Raising Jurisdictional and Constitutional Issues, And Of Ongoing Irreparable Harm, Indisputably Evidence The District Court's Abuse of Discretion.

By continuing to proceed against Benshoof without jurisdiction in SMC Nos. 656748 and 656749, the City exhibits bad faith and harassment that shocks the conscience in its retaliatory brutality.

> "The various authorities we have referred to furnish ample justification for the assertion that individuals who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."
> *Ex parte Young,* 209 U.S. at 156

VII. The Inappropriate Application of *Younger* Abstention Was An Abuse of Discretion By The District Court And Cannot Withstand Scrutiny.

Upon the foregoing, it is undeniable that district court abused its discretion by asserting *Younger* abstention to deny injunctive relief to Benshoof.

> "We conclude that on the allegations of the complaint, if true, abstention and the denial of injunctive relief may well result in the denial of any effective safeguards against the loss of protected freedoms of expression, and cannot be justified."
> *Dombrowski v. Pfister,* 380 U. S. 479 (1965)

The ongoing violations of Benshoof's first amendment rights remain a clear exception, pursuant to 28 U.S.C. § 2283, of any claim of *Younger* abstention. The abstention doctrine is properly applied only when each of the elements of the

doctrine's requirements is satisfied. *Amerisource Bergen Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007). *"New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350, 373, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989) ("[T]here is no doctrine that . . . pendency of state judicial proceedings excludes the federal courts.")." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013)

"[A] finding that the plaintiff is likely to succeed on the merits of [a constitutional] claim sharply tilts in the plaintiff's favor both the irreparable harm factor and the merged public interest and balance of harms factors." *Baird v. Bonta,* 2023 U.S. App. LEXIS 23760, *15 (citations omitted). It is black letter law that the deprivation of constitutional rights "unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976); see also *Fellowship of Christian Athletes,* 2023 WL 5946036, at *56 (describing the principle as "axiomatic"). Moreover, "'irreparable harm is relatively easy to establish in a First Amendment case' because the party seeking the injunction 'need only demonstrate the existence of a colorable First Amendment claim.'" *Id. Mirabelli v. Olson, 3:23-cv-00768-BEN-WVG, 29-30 (S.D. Cal. Sep. 14, 2023)*

"[T]he public interest is always furthered by enjoining unconstitutional policies. *Riley's Am. Heritage Farms v. Elsasser,*32 F.4th 707, 731 (9th Cir. 2022) ("it is always in the public interest to prevent the violation of a party's constitutional rights.") *Id.,* at 30.

The Ninth Circuit evaluates "these factors on a sliding scale, such 'that a stronger showing of one element may offset a weaker showing of another.' When the

balance of equities 'tips sharply in the plaintiff's favor,' the plaintiff must raise only 'serious questions' on the merits—a lesser showing than likelihood of success." *Fellowship of Christian Athletes v. San Jose Unified School District et al, No.* 22-15827, 2023 WL 5946036, at *35 (9th Cir. Sept. 13, 2023) (en banc) (citations omitted). *Id.,* at *5

VIII. The Equities Entirely Favor Injunctive Relief

District court's abuses of discretion are undeniable. The merits required granting injunctive relief. The immediate threat of escalating and irreparable harm to Benshoof is beyond rational dispute. Seattle Municipal Court is being "used to harass and injure [Benshoof], either because the state courts [are] powerless to stop deprivations or [are] in league with those who [are] bent upon abrogation of federally protected rights." *Mitchum v. Foster,* 407 U.S. 225, 240 (1972)

> *Cong.Globe,* 42d Cong., 1st Sess., 374-376 (1871). This view was echoed by Senator Osborn:
>
> "If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate. . . . We are driven by existing facts to provide for the several states in the South what they have been unable to fully provide for themselves, *i.e.,* the full and complete administration of justice in the courts. And the courts with reference to which we legislate must be the United States courts." *Id.* at 653.
>
> And Representative Perry concluded:
> "Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices. . . . [A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes, and feared detection. Among the most dangerous things an injured party can do is to appeal to justice." (external quotations omitted) *Mitchum v. Foster,* 407 U.S. 225, 240-241 (1972)

The balance of hardships and public interest weigh entirely in favor of injunctive relief, lest district court abet Respondent's assaults upon the Civil Rights Act.

CONCLUSION

For the reasons stated in this petition for discretionary review, Applicant Kurt Benshoof respectfully requests that the Court enjoin Respondents CITY OF SEATTLE and Ann Davison from continuing ongoing malicious prosecutions of Applicant, and that the Court enjoin Respondents PUGET CONSUMERS CO-OP and Freya Brier from perpetrating further violations of the Civil Rights Act of 1964, each of which irreparably harm Applicant with ongoing discriminatory segregation and retaliation, and the immediate threat of indefinite and unlawful imprisonment.

VERIFICATION

I, Applicant Kurt A. Benshoof, do hereby declare that the foregoing facts are true and correct to the best of my knowledge, under penalty of perjury of the laws of the United States. Executed this eighth day of April in the year 2024, in the city of Seattle, in the county of King, in the state of Washington.

Kurt A. Benshoof, Applicant, *pro se*
1716 N 128th Street
Seattle, WA 98133
(206) 460-4202
kurtbenshoof@gmail.com

FILED

APR 1 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Mr. KURT BENSHOOF,

Plaintiff - Appellant,

BRIANA GAGE,

Plaintiff,

v.

FREYA BRIER, et al.,

Defendants - Appellees,

MOSHE ADMON, et al.,

Defendants.

No. 24-952

D.C. No.
2:23-cv-01392-JNW
Western District of Washington,
Seattle

ORDER

Before: FRIEDLAND, VANDYKE, and MENDOZA, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the February 16, 2024 order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306 (9th Cir. 1989) (denial of temporary restraining order is appealable only if the denial is tantamount to the denial of a preliminary injunction). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF and BRIANA D. GAGE,

Plaintiffs,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK, BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, AMY FRANKLIN-BIHARY, WILLIE GREGORY, OWEN HERMSEN, DAVID KEENAN, GABRIEL LADD, MAGALIE LERMAN, MARY LYNCH, KATRINA OUTLAND, JESSICA OWEN, BLAIR RUSS, SPROUTS FARMERS MARKET, KING COUNTY, SEATTLE PUBLIC SCHOOLS, BIG 5 SPORTING GOODS, CENTRAL COOP, PUGET CONSUMERS CO-OP, FAYE CHESS, ANN DAVIDSON, ADAM EISENBERG, MATTHEW LENTZ, JEROME ROACHE, SOHEILA SARRAFAN, DAVID SULLIVAN, and JORDAN WALLACE,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF KURT BENSHOOF'S FOURTH MOTION FOR A TEMPORARY RESTRAINING ORDER

1. INTRODUCTION

This matter comes before the Court on Plaintiff Kurt Benshoof's fourth motion for a temporary restraining order. Dkt. No. 74. Benshoof asks the Court for two forms of injunctive relief: (1) an order enjoining Defendant City of Seattle from "acting to detain, arrest, imprison, prosecute, or sentence [him] relating to Seattle Municipal Court Nos. 656748 [and] 65674"; and (2) an order enjoining Defendant Puget Consumers Co-Op ("PCC") from continuing to deny Benshoof access to its grocery stores. *Id.* at 35-36. The Court DENIES both requests.

2. BACKGROUND

During 2020 and 2021, Benshoof refused to comply with PCC's policy that all shoppers must wear a mask or face shield when entering its stores. *See* Dkt. No. 47 at ¶¶ 129-257. Benshoof claims this policy violated his religious beliefs, which he describes as follows: "[t]he Breath of Life is sacred: it shall not be restricted nor impeded by coercion" and he is "spiritually proscribed from being coerced or forced to wear a face mask or face shield[.]" *Id.* at ¶¶ 1, 3. He goes on to say "[a] violation of the U.S. Constitution or the Washington Constitution constitutes a violation of Plaintiff's firmly held religious beliefs" and his "lawsuits are spiritual documents by which to perform exorcisms, removing demonic forces from the bodies of defendants[.]" *Id.* at ¶¶ 7, 10.

Benshoof also claims the policy was discriminatory because he cannot wear a face covering because of an unspecified disability. *Id.* at ¶¶ 11-12. Regarding his alleged disability, Benshoof states he "was sexually abused as a child by someone in a position of trust and authority; as such, demands by [D]efendants that [he]

restrict his breathing or cover his face were . . . abusive and triggering[.]" *Id.* at ¶ 11.

Several times, PCC employees asked Benshoof to put on a face covering or leave the store. *Id.* at ¶¶ 139, 163, 167, 173. PCC employees also called 911 to ask police to escort Benshoof from the store. *Id.* at ¶¶ 144, 165, 176, 180, 232. On October 2020, PCC "trespassed" Benshoof from all store locations. Dkt. Nos. 74 at 116; 88 at ¶ 6. Defendant Freya Brier drafted the trespass notice. Dkt. No. 84 at ¶ 6. Defendant Zachary Cook, the Fremont evening store manager, filed for a protective order against Benshoof in March 2021. Dkt. No. 47 at ¶ 245.

3. ANALYSIS

3.1 The Court has already denied Benshoof's motion for an injunction against the City of Seattle.

On September 29, 2023, Benshoof moved for a preliminary injunction enjoining the City of Seattle from "engaging in any act to harass, threaten, summon, *detain, arrest, prosecute, or imprison*" him under Seattle Municipal Court case number 656748. Dkt. No. 15 at 7 (emphasis added). The Court denied Benshoof's motion. Dkt. No. 38 at 16.

Days later, on October 2, 2023, Benshoof moved for a temporary restraining order enjoining the City of Seattle from "engaging in any act to harass, threaten, summon, *detain, arrest, sentence, or imprison*" him under Seattle Municipal Court case number 656749. Dkt. No. 16 at 16-17. The Court denied Benshoof's motion. Dkt. No. 29 at 10 (emphasis added).

To the extent Benshoof argues his present request is different from his previous requests, he is arguing semantics. Even if the wording of his requests are slightly different, the same reasoning articulated by the Court in denying his previous requests would apply—the relief he seeks is barred by *Younger v. Harris*, 401 U.S. 37 (1971). *See* Dkt. Nos. 29 at 8-9; 38 at 15.

The Court DENIES Benshoof's motion for a temporary restraining order against the City of Seattle as duplicative. Dkt. No. 74. If Benshoof continues to file frivolous motions, the Court will issue a show cause order asking why his conduct should not be sanctioned for violating Federal Rule of Civil Procedure 11(b)(2).

3.2 Benshoof fails to show irreparable harm absent an injunction against PCC.

Because PCC received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies. *Fang v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 16-cv-06071, 2016 WL 9275454, at *1 (N.D. Cal. Nov. 10, 2016), *aff'd*, 694 F. App'x 561 (9th Cir. 2017) ("[W]here notice of a motion for a temporary restraining order is given to the adverse party, the same legal standard as a motion for a preliminary injunction applies."). "A plaintiff seeking a preliminary injunction must establish that [(1) they are] likely to succeed on the merits, [(2)] that [they are] likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in [their] favor, and [(4)] that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As to the second element, courts will not grant relief "based only on a 'possibility' of irreparable harm." *Id.* at 22.

Benshoof argues the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Dkt. No. 74 at 34. He also argues the City of Seattle's prosecutions against him have prevented him from working, driving, traveling, entering grocery stores, entering courthouses, and reporting crimes to the Seattle Police Department. *Id.*

Benshoof fails to connect his alleged "irreparable harm" with the injunction sought—an order directing PCC to reverse its decision to "trespass" Benshoof from store locations. This relief is unrelated to the City's prosecutions. Nor would it halt any ongoing first amendment violations.

Benshoof brings 42 U.S.C. § 1983 claims against PCC, a private party. The Ninth Circuit has "recognized at least four different general tests that may aid us in identifying state action: "(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020).

Benshoof alleges the second test—joint action. He makes conclusory allegations of conspiracy between PCC employees—Cook and Brier—and state officials. He alleges "Brier and Cook were private individuals pervasively entwined in joint actions with state actors as integral participants to deny [Benshoof] the full and equal enjoyment of the goods and service[s], and facilities of PCC." Dkt. No. 47 at ¶ 796. He also alleges "Brier, Cook, and [Seattle Municipal Court Judge] Lynch, acted as integral participants to set in motion a series of events by which [Benshoof] would be punished for his beliefs by denying him the full and equal enjoyment of the goods, service[s], and facilities of PCC through restraining orders." *Id.* at ¶ 807.

The only facts Benshoof alleges to support his claims are that Cook "in joint action with [SPD officers] threatened [him] with arrest if [he] and [his son] did not leave the store" and Cook, "with the financial assistance of PCC[,]" retained an attorney and "filed a petition for a protection order" against him. *Id.* at ¶¶ 183, 244-245. "After the renewed restraining order expired on April 19, 2023, PCC Vice President of Legal Counsel, Freya Brier notified [Benshoof] by FedEx letter that PCC employees would call 911 to arrest [him] if [he] entered one of PCC's sixteen store locations again." *Id.* ¶ 257.

Conclusory allegations, however, are not enough to state a claim of conspiracy. *See Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003) (finding a plaintiff's "conclusory allegations that the lawyer was conspiring with state officers to deprive him of due process . . . insufficient."); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1184 (N.D. Cal. 2022) (finding "generalized statements about working together do not demonstrate joint action.").

In *Kiss v. Best Buy Stores*, No. 3:22-CV-00281-SB, 2022 WL 17480936, at *5 (D. Or. Dec. 6, 2022), *aff'd*, No. 23-35004, 2023 WL 8621972 (9th Cir. Dec. 13, 2023), the Oregon district court rejected arguments analogous to those Benshoof raises here. In *Kiss*, employees confronted the plaintiff and called police when he entered a Best Buy location without wearing a face covering in violation of the store's mask requirement. *Id.* at *1. The district court found no state action, rejecting the plaintiff's argument that summoning the police to arrest someone constitutes sufficient joint action to transform a private party into a state actor. *Id.* at *4. The district court ultimately held that because the plaintiff did not allege any

agreement between Best Buy and the police, the allegations could not support an inference of conspiracy. *Id.* at *5.

The same reasoning applies here. Cook called police to remove Benshoof from PCC and obtained a protective order. Benshoof makes no allegations to suggest some type of collusion beyond these facts that indicates a broader conspiracy. And what little Benshoof does offer in support of his Section 1983 claims against PCC shows that they are unlikely to succeed on the merits.

Because Benshoof does not show irreparable harm or a likelihood of success on the merits—required elements for the issuance of a TRO—the Court need not analyze the remaining *Winter* factors. The Court DENIES Benshoof's motion for a temporary restraining order against PCC.

4. CONCLUSION

Accordingly, the Court DENIES Benshoof's fourth motion for a temporary restraining order.

Dated this 16th day of February, 2024.

Jamal N. Whitehead
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF,

Plaintiff,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK. BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, JAMES ERVIN, DAVID ESTUDILLO, MARSHALL FERGUSON, MICHAEL FOX, COREY FOY, AMY FRANKLIN-BIHARY, WILLIAM GATES, III, STEVEN GONZALEZ, TYLER GOSLIN, WILLIE GREGORY, OWEN HERMSEN, JAY INSLEE, DAVID KEENAN, GABRIEL LADD, DANIEL LENTZ, MAGALIE LERMAN, MARY LYNCH, SARAH MACDONALD, ANTHONY MARINELLA, RICHARDO MARTINEZ, BRADLEY MOORE, KATRINA OUTLAND, JESSICA OWEN, PCC NATURAL MARKETS, KYLE REKOFKE, STEVEN ROSEN, BLAIR RUSS, UMAIR SHAH, SPROUTS FARMERS MARKET, MICHAEL THURSTON, JARED WALLACE, and SANDRA WIDLAN,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF'S MOTIONS FOR PRELIMINARY INJUNCTION AND GRANTING LEAVE TO AMEND HIS COMPLAINT

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1. INTRODUCTION

This matter is before the Court on its own motion. Plaintiff Kurt Benshoof, proceeding pro se and in forma pauperis, filed a civil rights complaint on September 19, 2023, naming 42 Defendants and pleading over 40 causes of action. *See generally* Dkt. No. 9. As explained below, the Court ORDERS Benshoof to replead his claims to comply with Fed. R. Civ. P. 8. The Court also DENIES Benshoof's two separately pending "Emergency Petitions for Preliminary Injunction." Dkt. Nos. 14, 15.

2. BACKGROUND

2.1 Factual allegations.

Benshoof's complaint spans 280 pages, contains over 1,000 paragraphs in its statement of facts, and includes over 2,000 pages in attachments. *See* Dkt. Nos. 9, 13. It is hard to make out the exact nature of his conflict among all of the irrelevant, conclusory, and confusing details, but Benshoof appears to allege Defendants violated his due process rights during multiple legal proceedings in Seattle Municipal Court and King County Superior Court. Dkt. No. 9 at 204-216. These cases include King County Superior Court Case No. 21-5-00680-6, a parentage action between Jessica Owen and Benshoof. *See* Dkt. Nos. 9 at 81-82; 13-2 at 13-18.

Owen and Benshoof are the parents of A.R.W. Dkt. No. 13-2 at 15. Benshoof alleges Owen and her attorneys made false statements about him, which led to a restraining order. Dkt. Nos. 9 at 82; 13-2 at 2-6. Under the restraining order, Benshoof cannot contact A.R.W. and he "may only effect service of process [on

Owen], for any and all legal proceedings, through use of either Pegasus Process Service or ABC Legal Services." Dkt. No. 13-2 at 4 (emphasis in original).

Beyond allegations about his family law cases, Benshoof brings claims about the implementation and enforcement of COVID-19 mask mandates.

Benshoof states his beliefs in his complaint:

> The Breath of Life is sacred and shall not be restricted nor impeded . . . [and] [t]he human body is a vessel of the Divine. God designed and created human bodies with innate immune systems enriched from the mother's breast milk.

Dkt. No. 9 at 20.

Benshoof also alleges his "invisible disabilities" preclude him from wearing a mask. *Id.* at 23. Specifically, he "was sexually abused as a child by someone in a position of trust and authority; as such, demands by [D]efendants that [he] restrict his breathing or cover his face were perceived by [Benshoof] as particularly ***abusive*** and ***triggering.***" *Id.* (emphasis in original). Benshoof alleges that being denied access to grocery stores and courts because of his refusal to wear a face mask violated his First Amendment right of religious expression and his rights guaranteed by the Americans with Disabilities Act. *See id.* at 188-191, 233-235.

2.2 Benshoof's first emergency petition for a preliminary injunction.

Benshoof asks the Court to bar the City and Seattle Police Department (SPD) officers from arresting and prosecuting him "under the family court Final Restraining Order for effecting service of process to 849 NE 130th ST [sic], Seattle, WA 98125 pursuant to Fed.R.Civ.P.4. [sic]." Dkt. Nos. 14 at 8; 14-1 at 2. According to Benshoof, Owen resides at the 849 NE 130th St. address. Dkt. No. 14 at 2.

Benshoof says both ABC Legal Services and Pegasus Process Service have refused to do business with him. *Id.*

2.3 Benshoof's second emergency petition for a preliminary injunction.

Benshoof seeks to enjoin the City and SPD officers from arresting and prosecuting him for charges levied in Seattle Municipal Court Case No. 656748. Dkt. No. 15 at 1. The municipal court docket shows Benshoof faces four charges of criminal trespass in the first degree, all of which are pending. *See City of Seattle v. Benshoof*, Case No. 656748 (Municipal Court of Seattle Nov. 13, 2020).[1] The matter is still pending although a warrant appears to have expired on August 29, 2023.

2.4 Procedural history.

Around a week after filing this lawsuit, Benshoof filed two "Emergency Petitions for Preliminary Injunction," and three motions for a temporary restraining order (TRO) on successive days between October 2-4, 2023. Dkt. Nos. 14, 15, 16, 20, 23. On October 6, 2023, the Court denied all three TRO motions. Dkt. No. 29.

In the past year, Benshoof has filed two other cases in this District that have raised similar issues about his family law disputes and objections to mask

[1] Under Rule 201(b), courts may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b)(2). Taking judicial notice of publicly available information provided by a government agency meets the requirements for judicial notice under the Rules. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006) (holding facts contained in public records are considered appropriate subjects of judicial notice). Therefore, the Court takes judicial notice of the municipal court docket in *City of Seattle v. Benshoof*, Case No. 656748 (Municipal Court of Seattle Nov. 13, 2020) (available at http://web.seattle.gov/SMC/ECFPortal/default.aspx).

mandates. The court dismissed both actions. *See Benshoof v. Keenan, et al.*, No. 23-cv-751-RAJ, Dkt. No. 22 (W.D. Wash. Jun. 12, 2023); *Benshoof v. Fauci, et al.*, No. 22-cv-1281-LK, Dkt. Nos. 7 (W.D. Wash. Oct. 31, 2022).

3. DISCUSSION

3.1 Legal standards.

When a litigant proceeds in forma pauperis ("IFP"), "the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(i)–(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (internal citation omitted) ("[S]ection 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim."). "The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (citing *Lopez*, 203 F.3d at 1122).

Thus, the complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation and quotation marks omitted). This standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

3.2 Benshoof's complaint is deficient.

Benshoof's complaint is sprawling. His causes of action are numbered within the complaint—46 in all—but they are not so clearly delineated as the enumeration would suggest. His claims can be roughly summarized as follows:

- Benshoof seeks declaratory judgment on 17 questions. *See* Dkt. No. 9 at 173-176 ("First Cause of Action").
- Benshoof pleads Constitutional violations, including several 42 U.S.C. § 1983 claims, *Bivens* claims, a denial of service under the 1964 Civil Rights Act, conspiracy under 42 U.S.C. § 1985(2)-(3) and 42 U.S.C. § 1986, and a related RICO action under 18 U.S.C. § 1962(c)-(d). *See id.* at 177-217, 218-268 (Benshoof's second through 22nd and 24th through 42nd causes of action).
- Benshoof seeks four preliminary injunctions, which he styles as his 43rd-46th causes of action. *See id.* at 268-277.
- Benshoof pleads two state-law claims: common law fraud and common law conspiracy. *See id.* at 220-224 (22nd and 23rd causes of action).

Some of these claims are deficient on their face. Others are impossible to understand as pled.

3.2.1 The Court lacks jurisdiction over Benshoof's "First Cause of Action" for "Declaratory Judgment."

The Uniform Declaratory Judgment Act, 28 U.S.C. § 2201, provides "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking

such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). "A lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III," and "must also fulfill statutory jurisdictional prerequisites." *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (citing *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 239–40 (1937); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950)). Because "[t]he Declaratory Judgment Act does not provide for its own subject matter jurisdiction," a plaintiff "must establish federal question jurisdiction or diversity jurisdiction before a district court can consider a request for declaratory judgment." *Fluke Corp. v. Ratner*, No. C07-1921-JPD, 2008 WL 11342997, at *2 n.2 (W.D. Wash. Apr. 18, 2008).

Benshoof asserts 17 questions that he labels "federal questions." But none of these questions are federal questions within the meaning of 28 U.S.C. § 1331. Nor does Benshoof allege diversity jurisdiction. Questions 1, 2, 3, 4, 6, 11, 12, 13, 16, and 17 ask the Court to interpret the Washington Constitution and Washington state statutes or court rules. *See* Dkt. No. 9 at ¶¶ 1281, 1282, 1283, 1284, 1286, 1291, 1292, 1293, 1296, 1297. Question 5 involves the jurisdiction of a family court, which is not a federal question. *See id.* ¶ 1285. Questions 8 and 14 relate to Benshoof's allegations against King County Superior Court Judge David Keenan and United States District Judge Richard Jones, however, the Court finds Benshoof's allegations against Judges Keenan and Jones are likely barred by absolute immunity so there is no live controversy between the parties. *See* Dkt. No. 9 at ¶¶ 1288, 1294; *see also infra* Section 3.2.3. Because the Court finds Benshoof's

allegations against William Gates to be deficient under Fed. R. Civ. P. 8(a), independent subject matter jurisdiction also does not exist for Questions 9 and 10, which ask the Court to decide whether Gates acted jointly with "state actors pursuant to 42 U.S.C. §§ 1983; 1985(2)(3)" and whether "the Bill and Melinda Gates Foundation is a 'person' under 18 U.S.C. § 1961(3) subject to 18 U.S.C. § 1962(d)." *See* Dkt. No. 9 at ¶¶ 1289, 1290; *see also infra* Section 3.3. Questions 7 and 15 are merely hypothetical. Question 7 asks whether a child can consent to receiving a COVID-19 vaccine and Question 15 asks whether the Ninth Circuit can "adjudicate Plaintiff's claims under 42 U.S.C. § 1983 when the facts evidence a prima facie case that judges of the U.S. District Court for the Western District of Washington acted, individually and in concert, to allow, enable, facilitate, or perpetrate violations of constitutional prohibitions?" *See* Dkt. No. 9 at ¶¶ 1287, 1295. These questions aren't tied to any live claim raised in this suit.

Accordingly, Benshoof does not meet the Declaratory Judgment Act's requirements, and he thus fails to state a claim for declaratory relief.

3.2.2 Benshoof's Section 1983 claims against private persons fail as a matter of law.

To state a Section 1983 claim, a plaintiff must "plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). As for the first element, a defendant acts under the color of state law where they "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state.'" *West v.*

Atkins, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). Generally, private parties are not acting under color of state law unless they conspire with state officials to deprive others of constitutional rights. *Price v. State of Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991) ("[P]rivate parties are not generally acting under color of state law"); *Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003). Conclusory allegations, however, are not enough to state a claim of conspiracy. *Simmons*, 318 F.3d at 1161 (finding a plaintiff's "conclusory allegations that the lawyer was conspiring with state officers to deprive him of due process . . . insufficient.").

Benshoof brings Section 1983 claims against Owen, her current partner, Lerman, and her friend, Hermsen, alleging they conspired to deny Benshoof his parental rights and extort him for the value of his FJ Cruiser. Dkt. No. 9 at ¶¶ 416–418. Owen, Lerman, and Hermsen are private individuals and Benshoof alleges nothing beyond private action and conclusory claims of conspiracy with the municipal court and police officers. Therefore, Benshoof cannot maintain Section 1983 claims against Owen, Lerman, and Hermsen.

Benshoof's claims against Brier, Cliber, Franklin-Bihary, Marinella, Rekofke, and Russ, who are all private attorneys, similarly fail. *See Simmons*, 318 F.3d at 1161 (holding plaintiff could not sue counsel under § 1983 because he was a "lawyer in private practice who was not acting under color of state law" and conclusory conspiracy allegations were insufficient).

3.2.3 Benshoof's claims against immune parties also fail as a matter of law.

"Judges are absolutely immune from damage actions for judicial acts taken within the jurisdiction of their courts[.]" *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) (citations omitted). Indeed, a judge retains absolute immunity even when the judge erroneously interprets jurisdiction. *See Sadoski v. Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006) (upholding immunity where a judge "acted in excess of his jurisdiction" but did "not act in clear absence of all jurisdiction."). Benshoof alleges several municipal and superior court judges acted without personal jurisdiction over him and further alleges he "did not consent to family court adjudicating his family affairs." *See* Dkt. No. 9 at 81, 146, 154. Even taking his allegations as true, Benshoof does not establish that any judges acted in clear absence of all jurisdiction. Thus, Benshoof's Section 1983 claims against Seattle Municipal Court judges and King County Superior Court judges all fail. Similarly, to the extent Benshoof alleges a *Bivens* claim against United States District Judge Richard Jones for his decisions in a prior habeas case, judicial immunity also blocks this claim. *See* Dkt. No. 9 at 172-173.

Benshoof sues United States District Judges David Estudillo and Ricardo Martinez, Washington State Supreme Court Chief Justice Steven González, and Seattle Municipal Court Judge Willie Gregory for issuing mask mandates in their courthouses. "Administrative decisions, even though they may be essential to the very functioning of the courts," are not within the scope of judicial immunity. *Forrester v. White*, 484 U.S. 219, 228–30 (1988). Even if the Court assumes without

deciding that these claims relate to administrative decisions for which judges are not immune, Benshoof's claims are moot. Benshoof has not alleged these mandates remain active or that he has suffered some actual harm. As a result, he lacks standing to bring a moot or hypothetical claim. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021) ("No concrete harm, no standing.").

Benshoof's Section 1983 claims against MacDonald and Outland are also barred by prosecutorial immunity. Prosecutors are absolutely immune from Section 1983 actions when performing functions "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). In other words, a "prosecutor is fully protected by absolute immunity when performing the traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997). "[T]he functional nature of the activities being performed, not the status of the person performing them, is the key to whether absolute immunity attaches." *Stapley v. Pestalozzi*, 733 F.3d 804, 810 (9th Cir. 2013).

Benshoof alleges City of Seattle Prosecutor MacDonald provided the court with insufficient evidence, engaged in ex parte communications with the judge during his court proceedings, failed to provide exculpatory evidence, and deceived the jury. Dkt. No. 9 at ¶¶ 954, 960, 995-997, 999, 1031-1034, 1047-1048. Benshoof alleges City of Seattle Prosecutor Outland failed to provide the Seattle Municipal Court evidence of proof of personal service or proof that Benshoof violated the law. Dkt. No. 9 at ¶¶ 1151-1155. The alleged conduct by MacDonald and Outland falls within the traditional function of an advocate, therefore, immunity precludes Benshoof's Section 1983 claims.

3.3 Benshoof's complaint violates Rule 8(a), so the Court orders him to replead his claims in compliance with the Civil Rules.

Benshoof alleges more—he alleges Section 1983 claims against SPD Officers Auderer, Coomer, Foy, Ladd, Lentz, and Wallace, Jane Adams Middle School Vice Principal Booker, Durken, Inslee, and Shah; he also alleges claims under Title II of the Civil Rights Act, 42 U.S.C. § 1985(2)-(3), 42 U.S.C. § 1986, and 18 U.S.C. § 1962(d). But the "prolixity," argumentativeness, redundancy, and often plain confusing nature of Benshoof's complaint makes it difficult to discern what the circumstances were that supposedly give rise to these claims. *See Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (upholding district court's dismissal of complaint without leave to amend because plaintiff violated Rule 8; explaining, "[o]ur district courts are busy enough without having to penetrate a tome approaching the magnitude of War and Peace to discern a plaintiff's claims and allegations.").

Rather than straightforwardly stating his claims and allegations, as required by Rule 8, Benshoof saddles the Court and Defendants with a nearly 300-page complaint and 2,000 pages of exhibits. A complaint so confusing that its "true substance, if any, is well disguised" may be dismissed sua sponte for failure to satisfy Rule 8. *Herns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1996)).

Instead of dismissal, however, the Court orders Benshoof to replead his claims. *Agnew v. Moody*, 330 F.2d 868, 870 (9th Cir. 1964) ("[T]he district court was entirely justified in holding that the complaint did not comply with Rule 8(a), and in

ordering [the plaintiff] to replead."); *see also Johnson Enter. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1332 n.94 (11th Cir. 1998) ("District courts have the inherent authority to demand repleader *sua sponte*.")

Any amended complaint must address—if possible—the deficiencies identified above and comply with Fed. R. Civ. P. 8 by providing a short plain statement of each of Benshoof's claims. For example, statements identifying (1) the right violated, (2) the name of the defendant who violated that right, (3) the specific, wrongful acts of the defendant, and (4) the resulting injuries, would suffice. It may be necessary to repeat this process for each named defendant.

3.4 Benshoof is not entitled to the injunctive relief sought in his separately pending motions.

Rather than leaving the question open during the pendency of an amended complaint, the Court addresses Benshoof's separately pending motions for injunctive relief. Dkt. Nos. 14, 15.

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A party seeking a preliminary injunction must establish four elements: (1) they are "likely to succeed on the merits," (2) they will likely "suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor," and (4) "an injunction is in the public interest." *Id.* at 20.

In his first motion, Benshoof asks the Court to exempt him from a restraining order issued by King County Superior Court Judge David Keenan that bars

Benshoof from serving Owen except with process completed by Pegasus Process Service or ABC Legal Services.[2] *See* Dkt. Nos. 13-2 at 4; 14. The restraining order originated from a parentage action, Case No. 21-5-00680-6. This matter is beyond the Court's subject matter jurisdiction, however, because the subject of Benshoof's request and the relief sought are inextricably linked to his family law case. "It is well-settled that federal district courts have no jurisdiction over child custody issues, which are exclusively matters of state law." *Benshoof v. Keenan*, No. C23-751-RAJ, 2023 WL 4142956, at *1 (W.D. Wash. June 12, 2023) (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 702–04) (1992) (affirming the domestic relations exception "divests the federal courts of power to issue divorce, alimony[,] and child custody decrees."). Because this Court likely lacks jurisdiction to grant the relief Benshoof seeks, he fails to establish he is likely to succeed on the merits and the Court DENIES his first motion for a preliminary injunction.

This is not the first time Benshoof has sought federal injunctive relief related to his child custody issues. *See Benshoof*, No. C23-751-RAJ, 2023 WL 4142956, at *1. In denying Benshoof's motion for a temporary restraining order and dismissing his complaint, the Honorable Richard A. Jones cautioned Benshoof that "federal

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[2] At one point in his motion, Benshoof argues due process requires that he be able to effect service of process through the U.S. Marshals. Dkt. No. 14 at 4. He further argues that the Court should enjoin the City of Seattle from detaining, arresting, imprisoning, or prosecuting the U.S. Marshals from serving process on Owen in this case. *Id.* at 1. The Court does not decide, at this time, whether the restraining order issued by Judge Keenan would allow service of process by the U.S. Marshals because Benshoof has yet to plead a claim against Owen. As the Court explained, Benshoof's Section 1983 claims against Owen fail because they involve only private action and, regardless, Benshoof must amend his complaint to comply with Fed. R. Civ. P. 8(a) before the Court will issue summonses.

courts are not courts of appeal from state decisions." *Id.* The Court reiterates this caution, as a pattern of unmeritorious litigation may lead to a bar order limiting Benshoof's ability to bring suit.

In his second motion, Benshoof asks the Court to enjoin the SPD from enforcing a bench warrant issued in the ongoing Seattle Municipal Court Case No. 656748. Dkt. No. 15. Federal courts will not interfere where "(1) there is an ongoing state judicial proceeding; (2) the proceeding implicate[s] important state interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief seek[s] to enjoin or has the practice effect of enjoining the ongoing state judicial proceeding." *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (internal quotation marks omitted) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)).

Here, the proceedings implicate local interests because the charges concern the City's ability to enforce local trespass laws. Benshoof does not allege the municipal court forum prevented him from raising his constitutional and jurisdictional claims. The requested relief would effectively disrupt and invalidate the municipal court proceedings even though Benshoof has not established bad faith, harassment, or extraordinary circumstances that would justify the Court setting aside abstention under the *Younger* abstention doctrine. Thus, Benshoof fails to show likelihood of success on the merits and the Court DENIES Benshoof's second motion for a preliminary injunction.

4. CONCLUSION

In sum, the Court orders as follows:

- The Court ORDERS Benshoof to file an amended complaint within 21 days of the date of this order that provides a short, plain, and concise statement of the factual basis for each of the claims as required by Fed. R. Civ. P. 8.
- The amended complaint will operate as a complete substitute for Benshoof's original pleading. Thus, any amended complaint must not cross-reference the original complaint, and must clearly identify the claims, the specific facts that support each claim, which allegations are relevant to which Defendants, and the specific relief requested.
- Failure to file a proper amended complaint within 21 days of the date of this order will result in dismissal of this action without prejudice.
- The Court DENIES Benshoof's emergency petitions for a preliminary injunction. Dkt. Nos. 14, 15.

Dated this 31st day of October, 2023.

Jamal N. Whitehead
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF,

Plaintiff,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK, BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, JAMES ERVIN, DAVID ESTUDILLO, MARSHALL FERGUSON, MICHAEL FOX, COREY FOY, AMY FRANKLIN-BIHARY, WILLIAM GATES, III, STEVEN GONZALEZ, TYLER GOSLIN, WILLIE GREGORY, OWEN HERMSEN, JAY INSLEE, DAVID KEENAN, GABREL LADD, DANEIL LENTZ, MAGALIE LERMAN, MARY LYNCH, SARAH MACDONALD, ANTHONY MARINELLA, RICHARDO MARTINEZ, BRADLEY MOORE, KATRINA OUTLAND, JESSICA OWEN, PCC NATURAL MARKETS, KYLE REKOFKE, STEVEN ROSEN, BLAIR RUSS, UMAIR SHAH, SPROUTS FARMERS MARKET, MICHAEL THURSTON, JARED WALLACE, and SANDRA WIDLAN,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF'S MOTIONS FOR TEMPORARY RESTRAINING ORDER

Plaintiff Kurt Benshoof, proceeding pro se and *in forma pauperis,* filed a Section 1983 civil rights complaint on September 19, 2023. Dkt. No. 9. Benshoof sues 42 Defendants and pleads 46 causes of action in his 280-page complaint. *Id.* In less than a week's time, Benshoof has moved for three temporary restraining orders (TROs). Dkt. Nos. 16, 20, 23. In each motion, he seeks to enjoin the City of Seattle from arresting or imprisoning him on a bench warrant issued by the Municipal Court of Seattle, which stems from three on-going criminal cases. *See id.* Because the doctrine of *Younger* abstention bars the Court from deciding Benshoof's claims, and because he is unlikely to succeed on the merits in any event, the Court DENIES Benshoof's TRO motions.

1. BACKGROUND

The Court granted Benshoof leave to proceed *in forma pauperis,* but it has not issued summonses yet, so Benshoof has not served Defendants with process. *See* Dkt. 8. Benshoof moved for three temporary restraining orders on successive days between October 2-4, 2023. Dkt. Nos. 16, 20, 23. The City opposed each motion. Dkt. Nos. 21, 24, 26. The Court discusses the circumstances behind each TRO motion below.

1.1. Benshoof's first TRO.

On October 2, 2023, Benshoof filed his first TRO motion. Dkt. No. 16. In it, he alleges he will be unlawfully imprisoned by the City based on a bench warranted issued by the Seattle Municipal Court in his pending criminal Case No. 656749. *Id.* at 1. Benshoof attached a copy of the docket from his municipal court case to his

motion, showing that he is representing himself pro se and failed to appear for a sentencing hearing on September 28, 2023, which prompted the municipal court to issue a bench warrant that same day. Dkt. No. 16-3 at 1, 12.

Benshoof describes the underlying charges and criminal proceeding like this:

Beginning in August 2020, Benshoof refused to wear a mask while shopping at PCC Community Markets because of his "firmly held religious beliefs" and "invisible disability." Dkt. No. 16 at 2. In October 2020, PCC cashiers denied Benshoof checkout services because he was not wearing a mask, so he left payment for his groceries inside the store, but away from the checkout stand. *Id.* at 3. PCC then accused Benshoof of shoplifting. *Id.* The City filed charges against Benshoof for criminal trespass and theft and a trial was eventually held. Dkt. No. 16-3 at 1, 6–8.

During his trial, Benshoof alleges the judge refused to "show the jury video of [him] leaving payment for his groceries out of view of the checkout security camera," and the prosecutor "knowingly and willfully deceived the jury to believe that [Benshoof] did not leave payment for his groceries." Dkt. No. 9 at 142, ¶¶ 1046–1047. Benshoof further argues the "City judges, prosecutors, and police officers have knowingly and willfully conspired with PCC employees against [him] for the exercise of [his] rights protected by the First Amendment" and to deny "equal access to shop at PCC[.]" Dkt. No. 16 at 8. Benshoof contends these actions amount to a malicious prosecution by the City. *Id.*

On September 23, 2021, the municipal court entered guilty findings on the two charges against Benshoof. Dkt. No. 16-3 at 8–9.

Back to the TRO; Benshoof alleges that absent an order restraining the Seattle Police Department (SPD) from arresting him under the bench warrant, he will be unable to "call 911 to make any future victim witness complaint[s] without facing immediate unlawful imprisonment[,]" and he will suffer a "loss of First Amendment rights[.]" Dkt. No. 16 at 10–11. Additionally, Benshoof claims he "has been living under threat of immediate unlawful arrest every day for months. This retaliation must stop immediately, lest another one of the poorly trained SPD officers who has drawn, or may draw, a loaded firearm at [Benshoof] pulls the trigger." *Id.* at 16.

Benshoof argues he will prevail on the merits because he "is entirely innocent of any wrongdoing, and is in fact the victim, the only possible outcome is [his] eventual vindication of any wrongdoing and the vacatur of [the municipal court case judgment]." *Id.* at 15.

1.2. Benshoof's second TRO.

On October 3, 2023, Benshoof moved for a second TRO. Dkt. No. 20. This motion concerns a separate municipal proceeding, Case No. 669329, in which the City charged Benshoof with violating a vulnerable adult protective order. *See id.* at 1; *City of Seattle v. Benshoof*, Case No. 669329 (Municipal Court of Seattle Nov. 8, 2022).[1] The matter is still pending although the warrant appears to have expired on

[1] Under Rule 201(b), the court may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Taking judicial notice of publicly available information provided by a government

July 19, 2023. *City of Seattle v. Benshoof*, Case No. 669329 (Municipal Court of Seattle Aug. 15, 2022). When Benshoof failed to appear in person for a hearing, the judge issued a bench warrant on June 21, 2023. *See id.*

Based on Benshoof's allegations, the charge appears to relate to a conflict he had with Jessica Owen. *See generally* Dkt. No. 9 at 146–149. Benshoof and Owen have a child, A.R.W. *Id.* at 24 ¶ 30. They appear to dispute the custody arrangement for A.R.W. *See id.* at 205 ¶¶ 1496–99 . Benshoof alleges the judge presiding over his municipal court case disregarded his argument that the court lacked jurisdiction. *Id.* at 147 ¶¶ 1094–96.

Benshoof argues a TRO is necessary to prevent irreparable harm. Dkt. No. 20 at 18. He generally lists the same harms identified in his first TRO motion: "the fact that [he] cannot call 911 to make any future victim witness complaint without facing immediate unlawful imprisonment" and that these retaliatory prosecutions cause a loss of First Amendment rights. *Id.*; *see also* Dkt. No. 16 at 10. Like the first TRO motion, Benshoof argues he will prevail on the merits because he "is entirely innocent of any wrongdoing, and is in fact the victim," leading the Court to dismiss

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agency meets the requirements for judicial notice under the Rules. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006) (holding that facts contained in public records are considered appropriate subjects of judicial notice). Therefore, the Court takes judicial notice of the municipal court docket in *City of Seattle v. Benshoof*, Case No. 669329 (Municipal Court of Seattle Nov. 8, 2022) and *City of Seattle v. Benshoof*, Case No. 671384 (Municipal Court Mar. 14, 2023) (available at http://web.seattle.gov/SMC/ECFPortal/default.aspx).

his underlying municipal proceeding, Case No. 669329. Dkt. No. 20 at 21; *see also* Dkt. No. 16 at 15.

1.3. Benshoof's third TRO.

On October 4, 2023, Benshoof moved for another TRO, even though his arguments largely mirror those found in his second TRO motion. *Compare* Dkt. No. 20 *and* Dkt. No. 23. In this motion, Benshoof claims he is in danger of imminent arrest because of a bench warrant issued in municipal Case No. 671384. Dkt. No. 23 at 1. The City brings 89 charges; two stalking charges, a custodial interference charge, and 86 charges of violating a vulnerable adult protection order. *See City of Seattle v. Benshoof*, Case No. 671384 (Municipal Court of Seattle Mar. 14, 2023). The disposition is pending, and Benshoof has again failed to appear. *Id.* Benshoof makes the same jurisdictional arguments found in his second TRO motion and repeats the same arguments about irreparable harm and likelihood of success on the merits. *See* Dkt. Nos. 20 at 18–19, 21; 23 at 19–20, 22.

2. DISCUSSION

2.1. Legal standard for temporary restraining orders.

In this District, TRO motions that do not meet the ex parte requirements must be served on the opposing party and "include a certificate of service[.]" LCR 65(b)(1). Formal service of process need not occur before moving for a TRO, so long as the adverse party has actual notice of the TRO motion. *H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 842 (7th Cir. 2012); *Glasser v. Blixseth*, No. C14-1576 RAJ, 2014 WL 12514894, at *1 (W.D. Wash. Nov. 14, 2014). Once notified of the TRO, "the adverse party must (1) file a notice indicating

whether it plans to oppose the motion within twenty-four hours after service of the motion, and (2) file its response, if any, within forty-eight hours after the motion is served." LCR 65(b)(5).

If "notice of a motion for a temporary restraining order is given to the adverse party, the same legal standard as a motion for a preliminary injunction applies." *Fang v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 16-cv-06071, 2016 WL 9275454, at *1 (N.D. Cal. Nov. 10, 2016), *aff'd*, 694 F. App'x 561 (9th Cir. 2017). In evaluating the merits of a motion for a temporary restraining order, courts consider the (1) likelihood of success on the merits; (2) irreparably injury to the moving party; (3) any substantial injury to other interested parties; and (4) public interest. *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017). The first factor—likely success on the merits—is the most important. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). If the moving party does not show likelihood of success on the merits, the court need not consider the other three factors. *Id.* (citing *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir.2013)).

2.2. Benshoof fails to establish he is likely to succeed on the merits of any of his TRO motions.

Benshoof notified the City that he would be seeking temporary restraining orders by sending copies of his motions to its legal service email address. Dkt. Nos. 16 at 18; 20 at 24; 23 at 25. The City appeared and responded to Benshoof's TRO

motions. Dkt. Nos. 17, 18, 21, 24, 26. The City argues Benshoof's claims are barred by *Younger v. Harris*, 401 U.S. 37 (1971). Dkt. No. 21 at 2.[2] The Court agrees.

From Benshoof's arguments, it is doubtful the causes of action asserted entitle him to the relief he seeks. It appears the allegations above relate to Benshoof's Section 1983 claims that the City violated his First, Eighth, and Fourteenth Amendment rights and engaged in a malicious prosecution. He alleges the charges violated his First Amendment rights because he had religious reasons for not wearing a mask, and that the municipal court set unreasonable bail and warrants in violation of the Eighth Amendment. Dkt. No. 9 at 188 ¶ 1383, 189 ¶ 1391; *see generally* 201–02. He also alleges his due process rights were violated because he could not present an exculpatory video to the jury. *Id.* at 208 ¶ 1519.

Because Benshoof seeks relief related to an ongoing criminal proceeding in municipal court, his claims will likely be barred by *Younger* abstention. Federal courts will not interfere were "(1) there is 'an ongoing state judicial proceeding'; (2) the proceeding 'implicate[s] important state interests'; (3) there is 'an adequate opportunity in the state proceedings to raise constitutional challenges'; and (4) the requested relief 'seek[s] to enjoin' or has 'the practice effect of enjoining' the ongoing state judicial proceeding." *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758

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[2] The City also argues Benshoof's claims cannot proceed under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Dkt. No. 21 at 2. Because it appears municipal court Case Nos. 656749, 669329, and 671384 remain ongoing, the Court applies the *Younger* abstention doctrine and finds it unnecessary to also analyze the motions under *Heck*.

(9th Cir. 2014)). Where there is bad faith, harassment, or some other extraordinary circumstances that would make abstention inappropriate, *Younger* does not apply. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 435 (1982).

Here, there are multiple ongoing proceedings in municipal court in which Benshoof has failed to appear. The proceedings implicate local interests because the charges concern the City's ability to enforce local trespass and theft laws, as well as uphold its protective orders. Further, Benshoof does not allege the municipal court forum prevented him from raising his constitutional and jurisdictional claims. The requested relief would effectively disrupt and invalidate the municipal court proceedings given that Benshoof asks the Court to enjoin enforcement of another court's warrants.

Finally, Benshoof fails to establish bad faith, harassment, or extraordinary circumstances that would justify the Court setting aside abstention under *Younger*. As the City points out, Benshoof does not show harms beyond those "incidental to every criminal proceeding brought lawfully and in good faith." *Younger*, 401 U.S. at 47 (citation omitted). Because federal abstention is almost certain, Benshoof fails to show likelihood of success on the merits and therefore does not meet the requirements for a temporary restraining order.

2.3. The Court will issue summonses if it finds Benshoof has stated a plausible claim for relief after completing its review of Benshoof's complaint under 28 U.S.C. § 1915(e)(2).

When a litigant proceeds *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks

monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(i)–(iii). As stated above, Benshoof's complaint is 280 pages long, and alleges 46 causes of action against 42 defendants. Dkt. No. 9. Benshoof also filed 2,034 pages of "Exhibits." Dkt. Nos. 13-1, 13-2, 13-3, 13-4. Given the length and number of claims, the Court has not yet completed its review under 28 U.S.C. § 1915(e)(2)(i)–(iii). Once completed, the Court will issue summonses, or dismiss all or part of Benshoof's complaint with or without leave to amend.

In addition, Benshoof filed two "Emergency Motion[s] for Preliminary Injunction" under Fed. R. Civ. P. 65(a). Dkt. Nos. 14, 15. Benshoof noted his motions for the same day he filed them. But under LCR 7(d)(3), motions seeking a preliminary injunction are noted "no earlier than the fourth Friday after filing and service of the motion." Thus, the Court revises the noting dates for Dkt. Nos. 14 and 15 to October 13, 2023.

CONCLUSION

Accordingly, the Court DENIES Benshoof's motions for a temporary restraining order. Dkt. Nos. 16, 20, 23. The Clerk is directed to change the noting dates for Dkt. Nos. 14 and 15 to October 13, 2023.

Dated this 6th day of October, 2023.

Jamal N. Whitehead
United States District Judge

Hon. Mark A. Larrañaga

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KURT A. BENSHOOF, *Pro Se,*

Plaintiff,

vs.

CITY OF SEATTLE,

Defendant.

No. 23-2-23749-8 SEA

ORDER DENYING PLAINTIFF'S PETITION FOR THE WRIT OF PROHIBITION

THIS MATTER having come before the undersigned judge of the above-entitled Court pursuant to City's Partial Motion to Dismiss in the above-entitled cause, and the Court has read and considered the following:

1. Plaintiff's Petition for Writ of Prohibition,
2. City's Response to Plaintiff's Petition for Writ of Prohibition,
3. Declaration of Dallas LePierre in Objection to Plaintiff's Petition for Writ of Prohibition,
4. Declaration of Katrina Outland in Objection to Plaintiff's Petition for Writ of Prohibition.

Argument was also heard on January 26, 2024.

Based on the foregoing, it is hereby ORDERED that Plaintiff's Petition for Writ of Prohibition is **DENIED**.

DATED this 5th day of February, 2024.

Mark A. Larrañaga
Hon. Mark A. Larrañaga
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number:	23-2-23749-8
Case Title:	BENSHOOF VS CITY OF SEATTLE
Document Title:	ORDER RE WRIT OF PROHIBITION
Signed By:	Mark Larranaga
Date:	February 05, 2024

Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:	B53C561C3AC69D12359B2A3F0D343B31FEB70629
Certificate effective date:	5/11/2023 12:14:51 PM
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Hon. Mark A. Larrañaga

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KURT A. BENSHOOF, *Pro Se,*

Plaintiff,

vs.

CITY OF SEATTLE,

Defendant.

No. 23-2-23764-1SEA

ORDER DENYING PLAINTIFF'S PETITION FOR THE WRIT OF PROHIBITION

THIS MATTER having come before the undersigned judge of the above-entitled Court pursuant to City's Partial Motion to Dismiss in the above-entitled cause, and the Court has read and considered the following:

1. Plaintiff's Petition for Writ of Prohibition,
2. City's Response to Plaintiff's Petition for Writ of Prohibition,
3. Declaration of Dallas LePierre in Objection to Plaintiff's Petition for Writ of Prohibition,
4. Declaration of Katrina Outland in Objection to Plaintiff's Petition for Writ of Prohibition.

Argument was also heard on January 26, 2024.

Based on the foregoing, it is hereby ORDERED that Plaintiff's Petition for Writ of Prohibition is **DENIED**.

DATED this 5th day of February, 2024.

Mark A. Larrañaga
Hon. Mark A. Larrañaga
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number:	23-2-23764-1
Case Title:	BENSHOOF VS CITY OF SEATTLE
Document Title:	ORDER RE WRIT OF PROHIBITION
Signed By:	Mark Larranaga
Date:	February 05, 2024

Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

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CERTIFICATION OF SERVICE

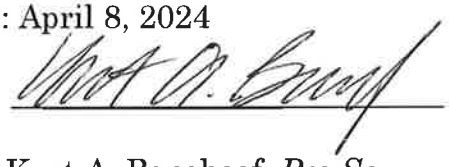
The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this 8th day of April 2024 and pursuant to USSC Rule 29.5(c), I caused to be served a true and correct copy of the foregoing document on the below-listed attorneys by email service and certified USPS mail to the following:

Attorneys For Respondent CITY OF SEATTLE:
Dallas LePierre, WSBA #47391
Catherine Riedo, WSBA #50418
701 Fifth Avenue
Suite 2050
Seattle, WA 98104
Email: dallas.lepierre@seattle.gov
Phone: (206) 386-1041
Email: catherine.riedo@seattle.gov
Phone: (206) 684-8200

Respondent Ann D. Davison:
Ann D. Davison, WSBA#35776
701 Fifth Avenue
Suite 2050
Seattle, WA 98104
Email: ann.davison@seattle.gov
Phone: (206) 684-8300

Attorneys for Respondents PUGET CONSUMERS CO-OP, Freya Brier:
Darren A. Feider, WSBA #22430
Email: dfeider@sbj.law
Matthew Coughlan, WSBA #56583
Email: mcoughlan@sbj.law
15375 SE 30th Place
Suite 310
Bellevue, WA 98007

DATED: April 8, 2024

Signed: 

Kurt A. Benshoof, *Pro Se*
1716 N 128th Street
Seattle, WA 98133