ORIGINAL

No. 23-7523

In The Supreme Court of the United States

IN RE KURT A. BENSHOOF,
Petitioner,

v.

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

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Kurt A. Benshoof, *Pro Se*
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Seattle, WA 98133
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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Pursuant to Rule 39 of the Rules of this Court, Petitioner Kurt Benshoof ("Petitioner") asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Petitioner was granted leave to proceed *in forma pauperis* on September 19, 2023, in U.S. District Court for the Western District of Washington, Case No. 2:23-cv-1392-JNW, and Petitioner's financial wherewithal has not improved since then.

Petitioner's Application and Declaration is attached hereto.

VERIFICATION

I, Kurt Benshoof, do hereby declare that the foregoing is true and correct to the best of my knowledge under penalty of perjury in the state of Washington and the United States. Executed this sixteenth day of May in the year 2024, in the city of Seattle, in the county of King, in the state of Washington.

Dated: May 16, 2024.

Respectfully submitted,

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AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, KURT BENSHOOF, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ n/a	$ 0	$ n/a
Self-employment	$ 0	$	$ 0	$
Income from real property (such as rental income)	$ 0	$	$ 0	$
Interest and dividends	$ 0	$	$ 0	$
Gifts	$ 0	$	$ 0	$
Alimony	$ 0	$	$ 0	$
Child Support	$ 0	$	$ 0	$
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$	$ 0	$
Disability (such as social security, insurance payments)	$ 0	$	$ 0	$
Unemployment payments	$ 0	$	$ 0	$
Public-assistance (such as welfare)	$ 0	$	$ 0	$
Other (specify):	$ 0	$	$ 0	$
Total monthly income:	$ 0	$	$ 0	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
n/a			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
n/a			$
			$
			$

4. How much cash do you and your spouse have? $ # 380

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
CHECKING	$ 28.42	$ n/a
SAVINGS	$ 50.27	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value n/a

☐ Other real estate
Value

☐ Motor Vehicle #1
Year, make & model 2011 Toyota FJ Cruiser
Value $ 23,000

☐ Motor Vehicle #2
Year, make & model
Value

☐ Other assets
Description tools and home stereo
Value $10,000

Medical and dental expenses $

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KURT A. BENSHOOF,
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v.

CITY OF SEATTLE, ANN D. DAVISON,
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QUESTIONS PRESENTED

In possibly the most prolonged subversion of the Civil Rights Act in Washington state history, Respondents have retaliated against Petitioner 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.* Police asserted *criminal* jurisdiction over a *civil* dispute, claiming Benshoof had violated the *law* by not complying with PCC's store *sign.*

U.S. District Court for the Western District of Washington denied the Motion for Temporary Restraining Order filed by Petitioner Kurt Benshoof ("Benshoof"), which sought to enjoin Respondents' ongoing violations of the Civil Rights Act of 1964, over three years of malicious prosecutions, and their threats of immediate, indefinite, and unlawful imprisonment.

The Ninth Circuit dismissed Benshoof's Appeal, claiming that it lacked jurisdiction because "denial of a temporary restraining order is appealable only if the denial is tantamount to the denial of a preliminary injunction" yet District Court stated, "Because [Respondents] received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies." District Court finalized its absolute denial of injunctive relief by revoking Benshoof's IFP status, certifying, "Benshoof's motion for TRO does not include a single non-frivolous claim" and that "Benshoof's appeal is frivolous and not taken in good faith."

The three questions presented are:

1. Whether the Ninth Circuit's dismissal of Benshoof's appeal effectively

sanctioned District Court departures from the accepted course of judicial proceeding, departures which enabled Respondents' ongoing violations of the Civil Rights Act of 1964.

2. Whether the Ninth Circuit departed from the accepted and usual course of judicial proceedings by denying Benshoof's right to appeal the District Court Order denying injunctive relief to Benshoof.

3. Whether Washington state courts decided important federal questions in ways that conflict with relevant decisions of this Court.

PARTIES TO THE PROCEEDINGS

Petitioner 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 appellee 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, was appellee in the Ninth Circuit Court of Appeals, 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 appellee in the Ninth Circuit Court of Appeals, was respondent and is defendant in the United States District Court for the Western District of Washington.

LIST OF PROCEEDINGS

The order of the Ninth Circuit Court of Appeals, dated April 29, 2024, denying appellant's motion for reconsideration, is attached hereto (App. 1a); docket number 24-952.

The order of the Ninth Circuit Court of Appeals, dated April 1, 2024, denying appellant's motion for reconsideration, is attached hereto (App. 17a); docket number 24-952.

The order of the United States District Court for the Western District of Washington, dated March 18, 2024, revoking Applicant's IFP status for appeal, is attached hereto (App. 18a); docket number 2:23-cv-1392-JNW.

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 (App. 24a); 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 (App. 31a); docket number 2:23-cv-1392-JNW.

The order of King County Superior Court, dated February 5, 2024, denying Benshoof's Petition for Writ of Injunction, is attached hereto (App. 47a); docket number 23-2-23749-8 SEA.

The order of King County Superior Court, dated February 5, 2024, denying Benshoof's Petition for Writ of Injunction, is attached hereto (App. 47a); docket number 23-2-23764-1 SEA.

JURISDICTION

The Court of Appeals of the Ninth Circuit entered judgments on April 29, 2024, (App. 1a) and April 1, 2024. (App. 17a) This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELATED CASES

United States Supreme Court

No. 23A933
Kurt Benshoof, *Applicant,* v. Freya Brier, et al, *Respondents.*

U.S. District Court for the Western District of Washington

WAWD No. 2:23-cv-1392-JNW
Kurt Benshoof, et al., *Plaintiffs,* v. Moshe Admon, et al., *Defendants.*

Washington Court of Appeals, Division I

No. 86467-0-I
Kurt Benshoof, *Appellant,* v. CITY OF SEATTLE, *Appellee.*

No. 86470-0-I
Kurt Benshoof, *Appellant,* v. CITY OF SEATTLE, *Appellee.*

Seattle Municipal Court

No. 656749
CITY OF SEATTLE, *Plaintiff,* v. Kurt Benshoof, *Defendant.*

No. 656748
CITY OF SEATTLE, *Plaintiff,* v. Kurt Benshoof, *Defendant.*

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Washington State Statutes

Washington State Agency Orders

Washington State Agency Guidelines

Other Authorities

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Public Law 88-352, July 2, 1964, Title II, § 204
(a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved.

Public Law 88-352, July 2, 1964, Title II, § 207
(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

STATEMENT OF THE CASE

While the issues before the Court regard violations of the Civil Rights Act, additional facts regarding Respondents' disregard of the Americans with Disabilities Act ("ADA") are provided herein as context, illustrating Respondents' widespread disregard for federal laws and how the judiciary allowed itself to be part of the problem. As this Court cautioned, "rule by indefinite emergency edict risks leaving all of us with a shell of a democracy and civil liberties just as hollow." *Arizona v. Mayorkas,* 143 S. Ct. 1312, 1316 (2023)

A. Conflicting Religious Beliefs

Just as the Declaration of Independence held "that all men are created equal, that they are endowed, by their Creator, with certain inalienable rights," Benshoof believes that his Creator endowed him with an innate immune system capable of responding to airborne pathogens. Benshoof is not alone in believing that the Breath of Life is sacred. Unfortunately, most of the Seattleites who go to yoga class every week forgot this ancient theological belief in 2020.

During the mass psychosis that began in 2020, going outside to breathe fresh air in the sunlight and exercise was deemed reckless behavior which endangered everyone's health. As Friedrich Nietzche observed, "Madness is something rare in individuals — but in groups, parties, peoples, and ages, it is the rule." Conveniently, people could still buy fast food at a drive through without wearing a mask, while a shocking percentage of Seattleites believed that any "anti-masker" should be imprisoned, and their children taken away. *See* Rasmussen Reports Poll: COVID-19: Democratic Voters Support Harsh Measures Against Unvaccinated - Rasmussen Reports®

"Trust the Science" was a BigPharma advertising slogan, employed to preempt common sense critical thinking and encourage mindless obedience. Science is a methodical process of theorizing, testing, questioning, and rigorous review, not an immutably fixed conclusion which prohibits debate.

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

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***, such as face masks and face shields, Congress was 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..."[1] Benshoof hasn't been sick since a bout of food poisoning

[1] *See* RCW 70.28.031(i)

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.

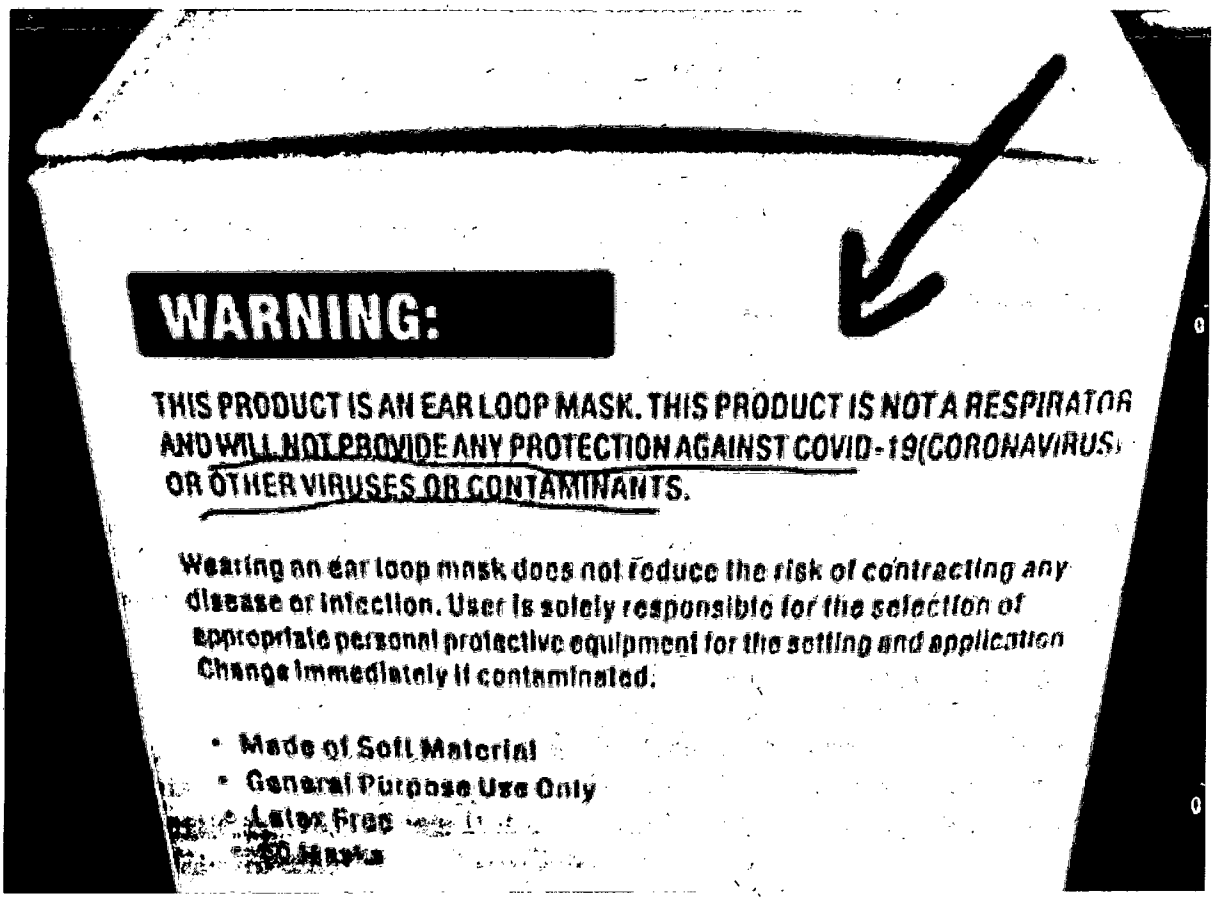
> "By amending the definition of "handicapped individual" to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears 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

C. 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 Benshoof declined, stating that his religious beliefs proscribed him from being coerced to wear a face covering. Just as Muslim employees could not require Christians to wear a burqa as a condition of entrance to a public accommodation, PCC could not arbitrarily require Benshoof to cover his face as an allegedly lawful condition of entrance. As if PCC allowing a face shield in lieu of a face mask wasn't already arbitrary and capricious, the box that the face masks were packaged in warned of the mask's uselessness.



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 employees that allegedly valid 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 viewed as serving *no purpose* or providing any protection from the transmission of COVID-19, *supra,* pg. 4 ¶5. In other words, PCC's face covering policy was arbitrary and capricious; therefore, it could not serve a compelling state interest.

D. 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, nor did the City ever acknowledge that the face covering proclamations were arbitrary and capricious.

E. 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.*** The City maliciously prosecuted Benshoof for over two years regarding the Sprouts arrests, then dismissed those charges with prejudice on February 24, 2023.[2]

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[3] 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."

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

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[2] Seattle Municipal Court Nos. 656877; 656927

[3] www.seattle.gov/documents/Departments/OIG/Other/Review_of%20Systemic_Non-Compliance_with_Masking_Requirements.pdf

legal. King County Sheriff 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 could not obtain criminal jurisdiction.* (D.C. Dkt. #74 pg. 12 ¶ 51)

F. 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.

Christian Marcella, the Perkins Coie, LLC, attorney who represented Zachary Cook to obtain the restraining order, suborned the perjury of Zachary Cook. Under penalty of perjury, Zachary Cook stated, "[Benshoof] yelled at me for several minutes" inside PCC Fremont on March 16, 2021. In reality, Benshoof never raised his voice, let alone yelled at Zachary Cook. Benshoof's GoPro video of the entire shopping experience proves this: https://vimeo.com/577051928/62b963725e?share=copy

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)

G. 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-and-a-half years. *See* Seattle Municipal Court Nos. 656748; 656749)

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." *Hamm v. City of Rock Hill,* 379 U.S. 306, 315 (1964)

In *Norwood v. Harrison*, 413 U.S. 455 (1973) this 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: "a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish." *Norwood* at 465. "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 citizen from exercising those rights in the future." *Sloman v. Tadlock,* 21 F.3d. 1462, 1469-70 (9th Cir. 1994)

H. 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 his 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 instead appeared by WebEx video. As with PCC employees, City judges were "following health guidelines" when they arbitrarily and capriciously 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 for Benshoof' arrest, he 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) states, "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. "[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)

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 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.

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 Defendant Judge Mary 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.*" The City only allowed jurors who did not object to coerced mask wearing to hear testimony, including Benshoof's trial; therefore, Benshoof was denied a representative jury.

Judge Lynch also denied Benshoof's right to take the witness stand, and the right to present exculpatory video evidence to the jury. Under the glare of the City's gaslighting, it was *Benshoof's* fault that he couldn't use the video monitor during the trial. 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 fraud 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 criminal trespass 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 prosecutions in violation of RCW 9.62.010. Since 2020, the City has failed to provide evidence of legal service of process under RCW 35.20.270(1), rendering the municipal court without personal 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." *Hertz Corp. v. Friend,* 559 U.S. 77, 94 (2010) The City has not explained, and cannot explain, how police obtained *criminal* jurisdiction over a *civil* dispute between Benshoof and PCC employees.

I. U.S. District Court

Without any factual or legal basis, District Court inverted the Supremacy Clause by tautologically claiming that Benshoof had been "trespassed." (App. 26a ¶2) By falsely inferring Benshoof was criminally trespassed by Respondents, literally putting "trespass" without quotation marks, District Court claimed Benshoof failed 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 from ongoing malicious prosecutions in violation of the Civil Rights Act and *Hamm v. City of Rock Hill,* 379 U.S. 306 (1964).

> "In short, now that Congress has exercised its constitutional power in enacting the Civil Rights Act of 1964 and declared that the public policy of our country is to prohibit discrimination in public accommodations as therein defined, there is no public interest to be served in the further prosecution of the petitioners. And, in accordance with the long established rule of our cases, they must be abated, and the ***judgment in each is therefore vacated, and the charges are ordered dismissed.***" *Id.,* at 317.

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 denial order 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*.

J. Ninth Circuit Court of Appeals

Benshoof immediately appealed to the Ninth Circuit Court of Appeals, citing *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." (9th Cir. No. 24-952, DktEntry 3)

Benshoof detailed nineteen errors of fact and law by district court. ""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 District Court denying both Benshoof's preliminary injunction (D.C. Dkt. #38) and temporary restraining order (D.C. Dkt. #74), despite there being a full adversary hearing, and despite District Court threatening Benshoof with sanctions if Benshoof pursued further interlocutory relief, the Ninth Circuit claimed that District Court's TRO denial order was *not* "tantamount to the denial of a preliminary injunction." (App. 17a)

1) Appealability Standard for TRO Denial

The Ninth Circuit's dismissal Order (App. 17a) cited *Reli. Tech. Ctr., Ch., Scientology v. Scott*, 869 F.2d 1306 (9th Cir. 1989). In that case the Ninth Circuit

stated, ""We have recognized, however, that a denial of a TRO may be appealed if the circumstances render the denial "tantamount to the denial of a preliminary injunction." *Environmental Defense Fund, Inc. v. Andrus,* 625 F.2d 861, 862 (9th Cir. 1980)." *Id.*, at 1308.

The record clearly showed that District Court's denial order was tantamount to the denial of a preliminary injunction, and *Reli. Tech. v. Scott* elucidated the Ninth Circuit's requisite rationale for such determinations. "In *Andrus* we held the denial of the TRO was tantamount to the denial of a preliminary injunction because of the presence of two factors: the denial of the TRO followed a "full adversary hearing" and "in the absence of review, the appellants would be effectively foreclosed from pursuing further interlocutory relief."" *Reli. Tech. v. Scott,* at 1308. Curiously, the Ninth Circuit then proceeded to ignore the District Court record, ignored the evidence of the District Court record which Benshoof pleaded in his appeal, and then proceeded to dismiss Benshoof's appeal by ignoring the Ninth Circuit's own case law set forth in *Environmental Defense Fund, Inc. v. Andrus,* and *Reli. Tech. v. Scott.*

Full Adversary Hearing

District Court's denial order followed a "full adversary hearing" including responses from the City and PCC, as well as replies from Benshoof. District Court stated that because Respondents "received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies." (App. 27a ¶3)

Further Relief Foreclosed

District Court's denial did not merely rule in favor of the City and PCC: district

REASONS FOR GRANTING CERTIORARI

I. Under Sup. Ct. Rule 10(a), This Petition Should Be Granted Because the Ninth Circuit's Dismissal Of Benshoof's Appeal Effectively Sanctioned Departures From The Accepted Course Of Judicial Proceedings By District Court—District Court Enabled Ongoing Violations Of The Civil Rights Act of 1964.

A. Injunctive Relief Under Title II of the Civil Rights Act

This Court's holdings in *Hamm v. City of Rock Hill,* 379 U.S. 306 (1964) are irrefutable, a granite cornerstone of our country's civil rights laws for sixty years. *Hamm* made no exception by which federal courts could proscribe the seeking of injunctive relief by an aggrieved party to enjoin malicious prosecutions for criminal trespass. Despite this fact, Respondents and District Court claimed that *Younger* abstention precluded Benshoof from seeking, let alone obtaining, injunctive relief under section 204 of the Civil Rights Act.

Doctrine cannot supersede congressional law. Section 204 explicitly authorizes "a civil action for preventative relief...by the person aggrieved." While Respondents may argue that the Civil Rights Act of 1964 preceded *Younger v. Harris,* 401 U.S. 37 (1971), the underlying bases of *Younger* abstention are antecedent: the notion of comity and the Anti-Injunction Act, 28 U.S.C. § 2283.

Younger addressed comity. "This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of "comity," that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare

...without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.
(b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title.

As this Court noted in *Mitchum v. Foster,* 407 U.S. 225 (1972), "The federal

best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger,* at 44. However, the notion of comity was moot regarding Benshoof's TRO: the City's ongoing malicious prosecutions of Benshoof cannot be deemed a "proper state function" deserving federal deference.

The counterpoint to the notion of comity, by which a federal court may give deference to a state court decision, is the necessity that federal courts must protect or effectuate their judgments. In lockstep, Respondents and District Court inverted this federal axiom, and would have this Court subordinate its judgment in *Hamm* to the City's desires to maliciously prosecute Benshoof.

> ***"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)

28 U.S.C. § 2283 provides that a court of the United States may grant injunctive relief "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Benshoof's TRO was necessary in aid of District Court's jurisdiction, and District Court was the *exclusive* venue for Benshoof to seek injunctive relief to enjoin state violations of the Civil Rights Act.

> **Public Law 88-352, July 2, 1964, Title II, § 207**
> (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.
> (b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title.

As this Court noted in *Mitchum v. Foster,* 407 U.S. 225 (1972), "The federal

anti-injunction statute provides that a federal court "may not grant an injunction to stay proceedings in a State court ***except as expressly authorized by Act of Congress***..." In his TRO, Benshoof directly quoted *Mitchum.* (D.C. Dkt. #74 pg. 31 ¶¶124; 126) Pub. Law. 88-352 § 207(a) "expressly authorizes" district courts "by Act of Congress" to grant aggrieved parties injunctive relief, pursuant to Section 204(a).

By granting deference to Seattle Municipal Court, District Court refused to adjudicate Benshoof's TRO pursuant to Article VI, Clause 2 of the United States Constitution, and shirked its duty to respect the holdings of this Court. ""It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Nitro–Lift Technologies, L.L.C. v. Howard,* 568 U.S. 133 (2012) (*per curiam*) (quoting *Rivers v. Roadway Express, Inc.,* 511 U.S. 298, 312 (1994)" *James v. City of Boise,* 577 U.S. 306, 307 (2016) Apparently, District Court has forgotten that it, "like any other state or federal court, is bound by this Court's interpretation of federal law." *Id.*

Because Respondents had engaged in, and there were reasonable grounds to believe that Respondents would continue, practices prohibited by section 203, section 204(a) of the Civil Rights Act of 1964 guaranteed Benshoof's right to initiate a civil action for preventative relief, including a *temporary restraining order.*

> **Public Law 88-352, July 2, 1964, Title II, § 204**
> (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, ***restraining order***, or other order, may be instituted by the person aggrieved.

Section 207(a) states that the "district courts of the United States *shall* have jurisdiction of proceedings instituted pursuant to this title and *shall* exercise the same *without regard* to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law." Despite these statutory mandates, District Court repeatedly claimed that it did not have jurisdiction under the doctrine of *Younger* abstention. (App. 27a ¶1)

District Court claimed that Benshoof had not exhausted state court remedy: "Benshoof does not allege the municipal court forum prevented him from raising his constitutional and jurisdictional claims." (App. 45a ¶3) Not only was this impertinent and immaterial, it was demonstrably false. Seattle Municipal Court has prevented Benshoof from even filing a motion for many months, let alone appearing in court. (D.C. Dkt. #74 pg. 13 ¶¶53-54)

> **Public Law 88-352 § 203**
> "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."

In seeking injunctive relief, Benshoof cited "Public Law 88-352—July 2, 1964, Title II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION." (D.C. Dkt. #74 pg. 22 ¶92) In seeking injunctive relief, Benshoof sought to enjoin ongoing discrimination by Respondents, who

continue to threaten Benshoof with immediate arrest if Benshoof attempts to enter any PCC store location.

By appealing to the Ninth Circuit, Benshoof sought to enjoin ongoing discrimination by Respondents. District Court punished Benshoof by revoking his IFP appeal status, claiming that "Benshoof's motion for a TRO does not include a single non-frivolous claim" and certifying "that Benshoof's appeal is frivolous and not taken in good faith." (App. 20a) In willful disregard of Public Law 88-352 § 203(b)(c), District Court threatened Benshoof, stating, "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)." (App. 27a ¶2)

B. Injunctive Relief Under 42 U.S.C. § 1983

The Civil Rights Act was not the only Act of Congress, exempted by 28 U.S.C. § 2283, which Benshoof invoked to seek injunctive relief. "An Act of Congress, 42 U.S.C. § 1983, expressly authorizes a "suit in equity" to redress "the deprivation," under color of state law, "of any rights, privileges, or immunities secured by the Constitution . . . ."" *Mitchum v. Foster,* 407 U.S. 225, 226 (1972) "It is clear from the legislative debates surrounding passage of § 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action, . . . whether that action be executive, legislative, or judicial." *Ex parte Virginia,* 100 U.S. 339, 346 (emphasis supplied). Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who

were bent upon abrogation of federally protected rights." *Id.*, at 240.

Upon Benshoof's information and belief, the Ninth Circuit intentionally shirked its duty to review District Court's judicial misconduct, thereby dismissing Benshoof's appeal under the ruse the Ninth Circuit didn't have jurisdiction. In so doing, the Ninth Circuit's dismissal of Benshoof's appeal effectively sanctioned departures from the accepted course of judicial proceedings by District Court, further enabling and prolonging the ongoing violations of the Civil Rights Act and harm to Benshoof.

II. Under Sup. Ct. Rule 10(a), This Petition Should Be Granted Because The Ninth Circuit Departed From The Accepted And Usual Course of Judicial Proceedings—Denying Benshoof's Right To Appeal The District Court Order Denying Injunctive Relief

The Ninth Circuit dismissal order (App. 17a) cited *Reli. Tech. Ctr., Ch., Scientology v. Scott*, 869 F.2d 1306 (9th Cir. 1989). In that case the Ninth Circuit stated, ""We have recognized, however, that a denial of a TRO may be appealed if the circumstances render the denial "tantamount to the denial of a preliminary injunction." *Environmental Defense Fund, Inc. v. Andrus,* 625 F.2d 861, 862 (9th Cir. 1980)." (*Id.*, at 1308)

The District Court's denial was tantamount to the denial of a preliminary injunction, and *Reli. Tech. v. Scott* elucidated the Ninth Circuit's rationale. "In *Andrus* we held the denial of the TRO was tantamount to the denial of a preliminary injunction because of the presence of two factors: the denial of the TRO followed a "full adversary hearing" and "in the absence of review, the appellants would be effectively foreclosed from pursuing further interlocutory relief."" *Id.*

District Court's denial order followed a "full adversary hearing," including responses from the City (D.C. Dkt. #81) and PCC (D.C. Dkt. #83). The denial order stated, "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. The Court denied Benshoof's motion. Dkt. No. 38." (App. 26a ¶3)

The denial order stated, "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). (App. 27a ¶1) The denial order acknowledged that because Respondents "received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies." (App. 27a ¶3)

District Court did not merely rule in favor of the City and PCC. District Court claimed that the entirety of Benshoof's thirty-six-page TRO, supported by over one hundred pages of appendices, was "frivolous" and threatened Benshoof with sanctions. (App. 27a ¶2) Benshoof was not only "effectively foreclosed from pursuing further interlocutory relief," he was threatened with financial sanctions if pursued further interlocutory relief as an indigent pro se.

There was a full adversary hearing in District Court and District Court left no doubt that Benshoof was "effectively foreclosed from pursuing further interlocutory relief." It was a flagrant abuse of discretion by the Ninth Circuit to cite *Reli. Tech.*

Ctr. v. Scott to claim that it "lacks jurisdiction over this appeal" by inferring that the "order challenged in the appeal is not final or appealable.

III. Under Sup. Ct. Rule 10(c), This Petition Should Be Granted Because A State Court Decided An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court.

Benshoof spent three years in state courts invoking the Civil Rights Act of 1964 and citing *Hamm v. City of Rock Hill,* 379 U.S. 306 (1964) to dismiss the malicious prosecutions by City of Seattle and to enjoin the ongoing discrimination by PCC employees. If state courts had been willing to protect Benshoof from discriminatory retaliation for his shopping in places of public accommodation, Benshoof would not have needed to turn to the federal courts for remedy.

Respondents' retaliations increased over time, rather than abating. Between the two prosecutions in Seattle Municipal Court Nos. 656748 and 656749, the City has issued $105,000 in bench warrants for Benshoof's arrest. King County Superior Court denied Benshoof's writs of prohibition, which sought to enjoin the malicious prosecutions in Seattle Municipal Court, now on appeal to the Washington State Court of Appeals, consolidated Case No. 86467-0-I.

King County Superior Court

Benshoof's petitions for writ of prohibition in King County Superior Court proved that the City did not obtain personal or subject matter jurisdiction to prosecute Benshoof for grocery shopping sans face covering. Just as the Seattle Police Department could not explain how officers could obtain criminal jurisdiction over a civil dispute between Benshoof and PCC employees, the City could not provide

evidence that mailing Benshoof criminal summons via USPS first class mail complied with RCW 35.20.270 to obtain personal jurisdiction over Benshoof.

> (1) All criminal and civil process issuing out of courts created under this title shall be directed to the chief of police of the city served by the court and/or to the sheriff of the county in which the court is held and/or the warrant officers and be by them executed according to law in any county of this state.

Instead, the City claimed it wasn't required to comply with RCW 35.20.270, citing RCW 2.04.190 as the alleged authority by which the City could the service of process requirement of RCW 35.20.270(1). However, RCW 2.04.190 does not apply to ***municipalities.*** RCW 2.04.190 states, "The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process.... of giving notice and serving writs and process of all kinds.... to be used in all suits, actions, appeals and proceedings of whatever nature by the ***supreme court, superior courts, and district courts of the state.***" (KCSC 23-2-23749-8, Document 12 pg. 4 ¶2) In the ninety-nine years since RCW 2.04.190 was enacted, the Washington legislature has never amended it to include municipal corporations, such as CITY OF SEATTLE.

The City could not provide evidence that Benshoof had violated a lawful condition of entry to PCC, a public accommodation, from which Seattle Municipal Court could obtain subject matter jurisdiction to prosecute Benshoof for grocery shopping sans face covering. Instead, the City impertinently employed the following straw man logical fallacy: "The City has exclusive original jurisdiction over all violations of city ordinances duly adopted by the City." (KCSC 23-2-23749-8, Document 12 pg. 3 ¶3)

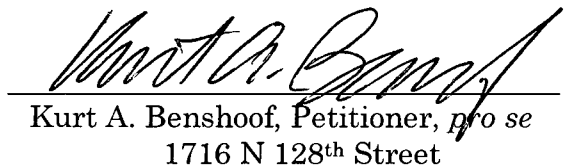
In summary, the City could not refute the proof that the City has maliciously prosecuted Benshoof for over three-and-a-half years for grocery shopping sans face covering. In other words, the City has been operating a RICO Enterprise, involving dozens of public officials and private individuals in joint action, just as Benshoof pled in District Court. Police are believed to have a thin blue line. Judges appear to have a thin black line. The King County trial court denied Benshoof's petitions for writ of prohibitions. In virtue-signaling irony, the namesake of King County is the Rev. Dr. Martin Luther King, Jr.

CONCLUSION

For the foregoing reason, it is respectfully requested that the petition for writ of certiorari be granted, and the decision of the U.S. Ninth Circuit Court of Appeals be summarily reversed.

VERIFICATION

I, Petitioner 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 on this sixteenth day of May in the year 2024, in the city of Seattle, in the county of King, in the state of Washington.



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