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**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

Washington State Representative ROBERT J. SUTHERLAND; JOHN HENRY MOSELAGE, III a voter in the 39th Legislative District; Washington State Representative ROB CHASE; LUKE DAVIS, a voter in the 4th Legislative District; Washington State Representative VIRGINIA GRAHAM; RUSSELL NEFF, a voter in the 6th Legislative District; Washington State Representative BOB MCCASLIN; GARY EDWARDS, a voter in the 4th Legislative District; JIM WALSH; JESSIE WESTCOTT, a voter in the 19th Legislative District; Washington State Representative JESSE YOUNG; CRAIG WELLBROCK, a voter in the 26th Legislative District

Plaintiffs,

v.

BERNARD DEAN, the Chief Clerk of the House of Representatives; LAURIE JINKINS; PAT SULLIVAN; LILLIAN ORTIZ-SELF; and MONICA STONIER as members of Washington House Executive Rules Committee.

Defendants.

CASE NO.:

**PLAINTIFFS' MEMORANDUM  
OF SUPPORT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

JURY DEMANDED

## INTRODUCTION

1  
2 “There is no such thing as a vote that doesn’t matter. It all matters.” Fmr. President Barack  
3 Obama.<sup>1</sup> For, “[i]f the provisions of the Constitution be not upheld when they pinch as well as when  
4 they comfort, they may as well be discarded.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398,  
5 483 (1934) (Sutherland, J., dissenting) (emphasis added).

6 This lawsuit challenges two actions, which are essentially a single, continuing action, each  
7 taken by the Washington State House of Representatives’ Executive Rules Committee (“Committee”  
8 or “ERC”). Each action was a glaring abuse of power, exploited the COVID-19 pandemic to seize  
9 authority and dominion over the entire Capitol Campus, lacking constitutional, statutory, or other legal  
10 basis. The first action occurring on or before October 18, 2021, when the Committee devised and  
11 implemented the *COVID-19, 2021 House Interim Operations Plan, Updated Sept 2021* (the “Interim  
12 Plan”), which categorically prohibits both members of the Washington State House of Representatives  
13 and staff who are unwilling or unable to provide affirmative proof of a COVID-19 vaccination from  
14 entering all “House facilities” (defined in the Interim Plan as the Capitol Campus and district offices)  
15 and The Interim Plan from engaging in legislative travel. These undocumented Representatives are  
16 treated in a separate, unequal manner than those Representatives who are vaccinated and willing to  
17 share such documentation with Defendant Dean and his staff. The Interim Plan was distributed by  
18 Defendant Dean to all members of the Washington State House of Representatives on September 30,  
19 2021. The second action occurred on November 18, 2021, when Defendant Dean distributed the *2022*  
20 *House Operations Plan* (“2022 Plan”)<sup>2</sup>, which prohibited the same undocumented House members  
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24 <sup>1</sup> President Barack Obama’s speech at: Congressional Black Caucus Foundation Dinner, September 17, 2016. Video  
25 available at: <https://www.c-span.org/video/?c4855645/user-clip-thing-vote-matter-matters>. Last accessed: October 14,  
2021.

<sup>2</sup> Collectively, the Interim Plan and the 2022 Plan are referred to as “the Plans.”

1 from accessing the Joint Legislative Operations Building with no accommodations. Interestingly, the  
2 2022 Plan allows members of the public to access the House Gallery without providing proof of  
3 vaccination while barring undocumented Members from accessing the House Floor, a critical  
4 workspace. These Plans individually and collectively create two classes of Legislator: the documented  
5 and the undocumented Representatives and bars the undocumented Representatives from equal access  
6 to necessary resources to do their work. In fact, the disparate treatment of the undocumented members  
7 is clear as they are granted less access to their workspace than the general public.

8         Plaintiffs include Members of the Washington State House of Representatives and Washington  
9 voters who voted for and/or supported one or more of the named Representative-Plaintiffs. Each  
10 undocumented Representative-Plaintiff is presently barred from the House facilities because of the  
11 Plans. Presently, under the Interim Plan means each Representative-Plaintiff is prevented from  
12 accessing their individual offices and workspace and is prohibited from conducting business at the  
13 Capitol Campus because of the Interim Plan. Consequently, the Voter-Plaintiffs are prevented from  
14 meeting with, conferring with, or engaging with their elected Representative at the Capitol Campus or  
15 in their district offices even though the House facilities are a public forum. Likewise, as each plaintiff-  
16 Representative is unable to effectively do his/her job, the Voter-Plaintiff's vote is correspondingly  
17 diminished unless and until the voter's elected Representative Plaintiff is returned to full and equal  
18 access to the resources to complete his scope of work.

19  
20         The unconstitutional Plans were neither devised, nor adopted by the House members at large,  
21 but by the seven-member House Executive Rules Committee. Young Decl., Exh B. The permanent  
22 House Rules, adopted as House Resolution 2021-4610 (Bill Number 4610), on February 25, 2021  
23 were adopted via motion vote without publicity or objection. The relevant sections of the permanent  
24  
25

1 House Rules are Rule 6 and Rule A-3. Rule 6 establishes a seven-member Executive Rules Committee  
2 (4 majority party, three minority party) and authorize, and Rule A-3 . The Executive Rules Committee  
3 members are: Lauri Jinkins, Pat Sullivan, Lillian Ortiz-Self, Monica Stonier, J.T. Wilcox, Joel Kretz,  
4 Paul Harris.<sup>3</sup> Upon information and belief, Jinkins, Sullivan, Ortiz-Self, and Stonier voted in favor of  
5 the Interim Plan and because of their individual vote, each is named as a defendant. Walsh Dec., Exh.  
6 D. It is presently unclear as to how the 2022 Plan was developed and adopted; however, the 2022 Plan  
7 was distributed by Defendant Dean.

8 Each Plan is overinclusive and discriminates against many House members and staff. Neither  
9 Plan provides an exception for those Representatives or staff possessing natural immunity to COVID-  
10 19. Neither Plan provides an exemption or accommodation process for Representatives, or staff, who  
11 decline vaccination pursuant to medical advice. Neither Plan provides an exemption or  
12 accommodation process for Representatives, or staff, who decline vaccination or disclosure of  
13 vaccination pursuant to sincerely held religious, philosophical, and freedom-of-conscience grounds.  
14 Each Plan simply creates two categories of legislators: documented legislators who have full  
15 privileges, and undocumented legislators whose rights, privileges, and abilities are curtailed and  
16 limited due to their undocumented status.

17  
18 The Plans abridge both the Representative Plaintiffs' and the Voter Plaintiffs' freedom of  
19 speech. The Plans provide no compelling reason to restrict the speech of the Representative Plaintiffs  
20 and the Voter Plaintiffs at the House facilities, a public forum. Certainly, there are many less  
21 restrictive means to achieve the same goal.

22  
23 The Plans unlawfully impinge upon both the Representative Plaintiffs' and the Voter Plaintiffs'

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25 <sup>3</sup> <https://leg.wa.gov/House/pages/leadership.aspx>

1 right of petition and assemblage as provided in Article I, Section IV of the Washington Constitution  
2 and the United States Constitution through the Fourteenth and First Amendments. The Plans deny  
3 undocumented, but duly elected, legislators the same rights given to the documented legislators,  
4 interferes with the Representatives' right to participate equally in the political process. The Plans  
5 violate the Voters' constitutional right to participate in and have access to government, a right which  
6 is one of the "fundamental principle[s] of representative government in this country." *Reynolds v.*  
7 *Sims*, 377 U.S. 533, 560, 566-68, 84 S.Ct. 1362, 1381, 1383-85, 12 L.Ed.2d 506 (1964).

8 The Plans result in more favorable treatment of undocumented Senators than undocumented  
9 House members. As opposed to the members and staff of the House of Representatives, as members  
10 and staff of the Washington Senate are not subject to the Interim Plan, nor has any Senate committee  
11 attempted to ban Senators and staff from the Capitol Campus based on vaccination status. Thus,  
12 similarly situated legislators are receiving preferential treatment because Senate members and staff  
13 have the privilege of entering and using the Capitol Campus facilities regardless of vaccination status.

14 *Importantly*, each Plan dilutes every Plaintiff's (and every Washingtonian's) vote, violating  
15 the Washington State Voters Rights Acts. Each Plan also violates the Americans with Disabilities Act  
16 and the Washington Law Against Discrimination neither allows for medical exemptions. Two of six  
17 of the undocumented Plaintiff Members have sought medical exemptions and were subsequently  
18 informed that medical exemptions are not permissible under the present circumstances. See: Graham  
19 and Sutherland Declarations.  
20

21 COVID-19 is real, and it poses real threats. Plaintiffs, many of whom have had COVID-19 or  
22 lost a dear one to COVID-19 recognize that "even in a pandemic, the Constitution cannot be  
23 forgotten," nor can our elected officials, in the battle against COVID-19. *Roman Cath. Diocese of*  
24

1 *Brooklyn v. Cuomo*, 141 S. Ct. 63, 66, 208 L. Ed. 2d 206 (2020). There are reasonable, more narrowly  
2 tailored methods to protect against COVID-19 within the legislature that do not include mandatory  
3 vaccination to allow Representatives to retain access to the Capitol Campus or to receive authorization  
4 for House approved travels. Unfortunately, in a time when elected officials are desperately needed to  
5 stand for their constituents, Defendants enacted and carried out the Plans, which deprive  
6 undocumented legislators' their lawful access to necessary resources to successfully represent their  
7 constituents, including the voter-Plaintiffs. The Plans are illogical, unnecessarily punitive, and  
8 discriminatory as it provides several *other* means to limit transmission of COVID-19, yet it prohibits  
9 the unvaccinated Members and staff from accessing the Capitol Campus, their district offices, or from  
10 completing House approved travel.

#### 11 **STATEMENT OF FACTS**

12  
13 On September 30, 2021, Defendant Dean, the Chief Clerk of the House of Representatives  
14 emailed the Members of the House of Representatives the COVID-19 2021 Interim Operations Plan,  
15 Updated September 2021 ("Plan" or "the Interim Plan"). Exhibit A of Declaration of Jesse Young  
16 filed herewith ("Young Dec." Exh. A.). The Interim Plan was adopted by the House Executive Rules  
17 Committee, comprised of seven house Members, four Democrats Lauri Jenkins, Pat Sullivan Lillian  
18 Ortiz-Self, Monica Stonier and three Republicans J.T. Wilcox, Joel Kretz, and Paul Harris. The four  
19 Democrats, named as defendants, Jenkins, Ortiz-Self, Stonier, and Sullivan voted in favor of the  
20 Interim Plan, while the three Republicans, Wilcox, Kretz, and Harris voted against the Rule. Young  
21 Dec., Exh. A. The Interim Plan was distributed by Defendant Dean. Young Dec., Exh. A. The Interim  
22 Plan expressly prohibits undocumented House Members and staff from accessing the Capitol Campus  
23 and district offices. Young Dec., Exh. A. The Interim Plan offers no exemptions or exceptions to the  
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1 Interim Plan. Sutherland Dec., Exh. A. When asked whether the exemptions were available under the  
2 Interim Plan, House Counsel, Ohad Lowy independently advised Representative Sutherland and  
3 Representative Walsh that “the House does not Plan a vaccine” and that “the House does not have a  
4 vaccination Plan or requires vaccination as a condition of employment.” Sutherland Dec., Exh. A.  
5 Declaration of Jim Walsh (“Walsh Dec.”), Exh. B. While no accommodations are offered, Mr. Lowy  
6 noted that accommodations can be made for vaccinated staff to assist Members in retrieving items  
7 from their Capitol offices. *Id.*

8 On November 18, 2021, Defendant Dean released the 2022 Rules, which prohibits  
9 undocumented House Members from accessing the legislative floor and requires that they work alone  
10 in their respective office. The 2022 Plan has no such restrictions for documented House members, and  
11 it even allows form members of the public to attend legislative sessions in the gallery.  
12

13 Rob Chase is a Representative for the 4<sup>th</sup> Legislative District of Washington. Declaration of  
14 Rob Chase (“Chase Dec.”), Exh. C. He has held this position for 1 year.

15 Luke Evans is a voter who has voted for, and supported Representative Chase. Declaration  
16 of Luke Evans filed herewith (“Evans Dec.”) Exh. D.

17 Virginia “Jenny” Graham is the Representative for the 6<sup>th</sup> Legislative District of Washington.  
18 Declaration of Representative Graham (“Graham Dec.”), Exh. E. She has held this position since 2019.

19 ¶¶ 2.

20 Russell Neff is a voter who has voted for, and supported Representative Graham. Declaration  
21 of Russell Neff filed herewith (“Neff Dec.”) Exh. F.

22 Bob McCaslin is a Representative for the 4<sup>th</sup> Legislative District of Washington. Declaration  
23 of Bob McCaslin (“McCaslin Dec.”), Exh. G. He has held this position since 2014.  
24

1 Gary Edwards is a voter who has voted for, and supported Representative McCaslin.  
2 Declaration of Gary Edwards filed herewith (“Edwards Dec.”) Exh. H.

3 Robert Sutherland is the duly elected 39<sup>th</sup> Legislative District Representative. Sutherland Dec.  
4 ¶¶ 2. Exh. A. Representative Sutherland has a history of adverse reactions to shots, including an  
5 adverse reaction to his most recent vaccine; a flu shot in 1994. Sutherland Dec. ¶¶ 5. Exh. A.  
6 Representative Sutherland has discussed risks associated with the COVID-19 vaccine and his need to  
7 abstain from the vaccine. Sutherland Dec. ¶¶ 6. Exh. A. Representative Sutherland sought a medical  
8 exemption from his primary care physician, but he was unable to obtain one without *first* providing an  
9 exemption form from the House of Representatives. Sutherland Dec. ¶¶ 6. Exh. A. Representative  
10 Sutherland requested such a form from the House of Representatives, and House legal counsel, Ohad  
11 Lowy, informed Representative Sutherland that no such form is available as the vaccine Plan is not a  
12 condition of employment and that the “facility access requirement does not require an accommodation  
13 process because it is not a condition of employment.” Sutherland Dec., Exh. A. Exh. A. Representative  
14 Sutherland presently has no access to the Capitol Campus as he cannot receive accommodations, and  
15 he has a legitimate medical concern. Sutherland Dec. ¶¶ 6. Exh. A.

17 John Henry Moselage, III is a voter and supporter of Robert Sutherland. Declaration of John  
18 Henry Moselage, III filed herewith (“Moselage Dec.”) Exh. I. Mr. Moselage spent hundreds of hours  
19 over the course of the past two election cycles working on Representative Sutherland’s behalf and has  
20 donated to his campaigns. Moselage Dec. ¶¶ 4-5. Exh. I. Mr. Moselage has frequent contact with  
21 Representative Sutherland while the Representative is in and out of session and shares ideas and  
22 information with the Representative. Moselage Dec. ¶¶ 6. Exh. I. If Representative Sutherland is  
23 barred from accessing his office and staff and is unable to adequately function in his role as a duly  
24

1 elected Representative, Mr. Mosely's vote will no longer have the value it once did. Moselage Dec.  
2 ¶¶ 7. Exh. I. Additionally, if Representative Sutherland continues to be banned from House facilities,  
3 both Representative Sutherland's and Mr. Mosley's ability to participate in the legislative process  
4 is severely diminished as compared to those similarly situated.

5 Jim Walsh is the is the duly elected Representative of the 19<sup>th</sup> Legislative District  
6 Representative. Declaration of Jim Walsh filed herewith ("Walsh Dec.") Exh, B.

7 Jessie Westcott is a voter who has voted for, and supported Representative Walsh. Declaration  
8 of Jessie Westcott filed herewith ("Westcott Dec.") Exh. J.

9 Jesse Young is the is the duly elected Representative of the 26<sup>th</sup> Legislative District  
10 Representative. Declaration of Jesse Young filed herewith ("Young Dec.") Exh, K. Representative  
11 Young has declined the COVID-19 vaccine for deeply held religious beliefs. Young Dec. ¶¶ 3. Exh.K.

12 Craig Wellbrock is a voter who has voted for, and supported Representative Young.  
13 Declaration of Craig Wellbrock filed herewith ("Wellbrock Dec.") Exh. M. Mr. Wellbrock has had  
14 substantial contact with Representative Young throughout the pandemic as Representative Young  
15 has been an asset in Mr. Wellbrock obtaining a religious exemption from the COVID-19  
16 vaccination. Wellbrock Dec. ¶¶ 5-6. Throughout the pandemic, Representative Young's local office  
17 has been a critical meeting place for Rep. Young, Mr. Wellbrock, and others in a similar situation.  
18 Wellbrock Dec. ¶¶ 7.

19  
20 The Plans will directly impact the ability of these undocumented Representatives to effectively  
21 do their job as these individuals will be locked out of their offices. The Representatives have no  
22 recourse as they are informed that there is no way to seek accommodations to grant them access to  
23 *their* offices at the Capitol Campus under the Interim Plan or to have access to staff *in* their offices or  
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1 the House Floor during the 2022. Voters who have duly elected these four Representatives are directly  
2 impacted as their advocates have lost their voices and inability interact with other Representatives,  
3 staff, and members of the public.

#### 4 ARGUMENT AND AUTHORITY

5 To obtain injunctive relief, Plaintiffs must show a likelihood of success, that denying them  
6 relief would lead to irreparable injury, and that granting relief would not harm the public interest.  
7 *Diocese of Brooklyn* at 66. Under Washington Law, the court may issue injunctive relief on no or  
8 short notice. RCW 7.40.010 and Civil Rule 65. One seeking a temporary or permanent injunction  
9 must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that  
10 right, and (3) that the acts complained of are either resulting in or will result in actual and substantial  
11 injury to the individual. *Fed. Way Family Physicians, Inc., v. Tacoma Stands Up for Life*, 106 Wash.2d  
12 261, 265; see also: *Washington Fed'n of State Emps., Council 28, AFL-CIO v. State*, 99 Wn.2d  
13 878, 887-88, (1983), citing with approval in also *San Juan County v. No New Gas Tax*, 160  
14 Wn.2d 141, 153 (2007). The showing for declaratory relief is straightforward as it requires a  
15 “justifiable controversy,” or, (1) an actual, present and existing dispute (whether the Plans infringe on  
16 Plaintiff’s rights to access the Capitol Campus or dilutes Plaintiffs’ votes), (2) between parties having  
17 genuine and opposing interests, (3) the matter involves direct and substantial interests (Representative  
18 access to the Capitol Campus and voter integrity/dilution), and (4) a judicial determination will be  
19 final and conclusive. *Langworthy v. Alt. Humane Soc’y*, No. 80754-4-I, at \*13 (Wash. Ct. App. Nov.  
20 2, 2020) The Uniform Declaratory Judgments Act’s “purpose is to settle and to afford relief from  
21 uncertainty and insecurity with respect to rights, status and other legal relations.” See RCW 7.24.120  
22 and *Washington State Coalition for the Homeless v. Department of Social & Health Services*, 133 Wn.

1 2d 894, 916 (Wash. 1997). This issue is appropriate for injunctive and declaratory relief as such a  
2 controversy exists.

3 Here, the House Clerk is treating the Plans' prohibition of duly elected Representatives from  
4 accessing their Capitol Offices, the Capitol Campus, their district offices, limiting interaction with  
5 members of the public, and barring these undocumented legislators from the House floor during  
6 legislative session, as if such prohibition causes no impact to these Representatives or their supporters.  
7 That is simply not true. This is the irreparable injury as these Members cannot do their jobs effectively,  
8 and their voices are silenced. The public is harmed by the diluted votes and diluted democracy; this is  
9 clearly demonstrated through the voter-plaintiffs' declarations. This dilution, this imbalanced  
10 democracy, where the act of a few committee members can ban and exclude Representatives from  
11 resources constitutionally guaranteed and allocated to all Representatives regardless of vaccine status  
12 prior to September 2021, calls into question our republic form of government, which inherently places  
13 the power of government in the hands of the People. WA Const. Art. 1, Sec. I. These facts and analysis  
14 demonstrate that the Plaintiffs are likely to prevail, that denying them relief would lead to irreparable  
15 injury, and that granting relief would not harm the public interest. *See Winter v. Natural Resources*  
16 *Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

17  
18 Without a TRO or preliminary injunction, violations of Plaintiffs' state and federal  
19 constitutional and civil rights will continue causing Plaintiffs significant harm.

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24 **Loss of First Amendment Freedoms is Irreparable**

1 The First and Fourteenth Amendments to the United States Constitution secure to each person  
2 the right against State interference in the free exercise of religion. Similarly, the State of Washington’s  
3 Constitution, Article I, Sections 11 and 12 secure these rights.

4 Article I, Section 11 of the Washington Constitution provides in relevant part, “Absolute  
5 freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to  
6 every individual...” The Free Exercise Clause of the First Amendment, which has been applied to the  
7 States through the Fourteenth Amendment, provides that “Congress shall make no law respecting an  
8 establishment of religion, or prohibiting the free exercise thereof. . . [.]”<sup>4</sup> Accordingly, the plain  
9 language of the First Amendment limits *government action* that “prohibits” free exercise and our state  
10 provision “absolutely” protects freedom of worship and bars conduct that merely “disturbs” another  
11 on the basis of religion.<sup>5</sup> Thus, as Washington citizens, Plaintiffs’ individual and collective religious  
12 beliefs and conduct are constitutionally protected. There can be no question that the Interim Plan has,  
13 and will continue to, cause irreparable harm to these rights and that the 2022 Plan will have the same  
14 effect. Importantly, the United State Supreme Court has provided that “[t]he loss of First Amendment  
15 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”<sup>6</sup>  
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21 <sup>4</sup> *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (internal  
citation omitted).

22 <sup>5</sup> A *Gunwall* analysis is unnecessary as “already determined in a particular context the appropriate state constitutional  
23 analysis under a provision of the Washington State Constitution, it is unnecessary to provide a threshold *Gunwall* analysis.”  
*City of Woodinville v. Northshore United Church of Christ*, 166 Wash. 2d 633, 641, 211 P.3d 406, 410 (2009). Washington  
24 courts previously interpreted Section 11 to provide the same protection as the First Amendment’s free exercise clause and  
therefore applied strict scrutiny to laws burdening religion. *State v. Arlene’s Flowers, Inc.*, 193 Wash. 2d 469, 524, 441  
P.3d 1203, 1231 (2019) (collecting cases).

25 <sup>6</sup> *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (citing *Elrod v. Burns*, 427 U.S. 347,  
373, 96 S.Ct. 2673 (1976) (plurality opinion)).

1 Furthermore, “when an alleged deprivation of a constitutional right is involved, most courts hold that  
2 no further showing of irreparable injury is necessary.”<sup>7</sup>

3 Representative Walsh and Young both have sincerely held religious beliefs regarding their  
4 right to choose what is done to their bodies. When determining whether a person holds sincerely held  
5 religious belief, the government cannot define the scope of personal religious beliefs. *See Holt v.*  
6 *Hobbs*, 574 U.S. \_\_\_, 135 S.Ct. 853, 190 L.Ed.2d 747 (2015). Moreover, the Supreme Court instructs  
7 that courts should not “question the centrality of particular beliefs or practices to a faith, or the validity  
8 of particular litigants’ interpretations of those creeds.” *Employment Div., Dept. of Human Resources*  
9 *of Ore. v. Smith*, 494 U.S. 872, 887, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). The Free Exercise Clause  
10 “forbids subtle departures from neutrality,”<sup>8</sup> and covert suppression of particular religious beliefs.  
11 Official action that targets religious conduct for distinctive treatment cannot be shielded by mere  
12 compliance with the requirement of facial neutrality. The Free Exercise Clause protects against  
13 masked and overt governmental hostility, and the courts are directed to “survey meticulously the  
14 circumstances of governmental categories to eliminate, as it were, religious gerrymanders.”<sup>9</sup> The  
15 Plans require elected government officials force any individual (plaintiff-Representatives) to choose  
16 between maintaining religious practices and individual freedom of association or coercing these  
17 individuals into the State’s dictates to access the individual’s work place (the Capitol Campus) and  
18 participate in workplace activities, the imposing officials overtly infringe in individual constitutional  
19 liberties.  
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23 <sup>7</sup> *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984), citing what is now 11A, Federal Practice & Procedure, §  
24 2948.1 n. 21 (3d ed.); See also: *County of Spokane v. Local No. 1553*, 76 Wn. App. 765, 770(1995).

24 <sup>8</sup> *Gillette v. United States*, 401 U.S. 437, 452, 91 S.Ct. 828, 837, 28 L.Ed.2d 168 (1971).

25 <sup>9</sup> *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696, 90 S.Ct. 1409, 1425, 25 L.Ed.2d 697 (1970) (Harlan, J.,  
concurring).

1 Because the Plans clearly burden the Representatives’ exercise of religion, the defendants must  
2 show that the Interim Plan is narrowly tailored to achieve a compelling goal. *Roman Diocese* at 67  
3 citing: *Church of Lukumi* at 546. The defendants cannot satisfy this burden. Stopping COVID is a  
4 compelling interest; however, neither Plan can achieve such lofty goals, nor is either Plan narrowly  
5 tailored in fact, neither Plan is tailored...at all. For the past 20 months, including the “long” legislative  
6 session of the biennial legislative session (105 days), Legislators have effectively met, convened, and  
7 worked together without requiring each member attest to being fully vaccinated against COVID-19.  
8 There are less restrictive means to accomplish the State’s interest, including implementing the same  
9 rules that were in place prior to wide spread vaccine availability: mask wearing, social distancing,  
10 having **all** legislators working from home, and closing the facilities to the public, for example, would  
11 be a great start. In fact, such means were adopted in the Senate Plan, which allows for all 49 senators  
12 (on the floor) and up to 12 members of the public (in the gallery) to attend a given session, regardless  
13 of vaccination status. The Senate’s Plan demonstrates that the House Plan could allow for in-person  
14 attendance of the Members.  
15

16 Additionally, neither Plan is narrowly tailored because neither can accomplish the alleged goal  
17 of preventing the spread of COVID-19. Forcing people to get vaccinated does not stop the spread of  
18 COVID-19. Indeed, even the CDC admits that fully vaccinated individuals may spread COVID-19  
19 with the same rate as unvaccinated and even the “fully vaccinated” can contract COVID-19 and spread  
20 COVID-19.<sup>10</sup> If the rationale was true then states and countries without vaccine mandates and less  
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22 <sup>10</sup> CDC October 29, 2021 publication 70(43);1520–1524, *COVID-19 Vaccination and Non-COVID-19 Mortality Risk —*  
23 *Seven Integrated Health Care Organizations, United States, December 14, 2020–July 31, 2021* notes that Standard  
24 Mortality Rates (“SMRs”) “after dose 1 were 0.42 and 0.37 per 100 person-years for Pfizer-BioNTech and Moderna,  
25 respectively, and were 0.35 and 0.34, respectively, after dose 2 (Table 2). These rates were lower than the rate of 1.11 per  
100 person-years among the unvaccinated mRNA vaccine comparison group (p <0.001). Among Janssen vaccine  
recipients, the overall SMR was 0.84 per 100 person-years, lower than the rate of 1.47 per 100 person-years among the

1 restrictive COVID-protection protocols should show significantly higher rates of transmission,  
2 hospitalizations, and death. The facts, however, do not support the supposition. Additionally, the  
3 requirement of being “fully vaccinated” is an ever-moving goal post as it is likely that within months  
4 persons who are currently considered fully vaccinated will no longer qualify and will be required to  
5 get injected with a booster to be, once again, considered “fully vaccinated.”<sup>11</sup> The Interim Plan directly  
6 impacts each plaintiff-Representative’s First Amendment rights, bodily integrity (a fundamental  
7 liberty), and ability to equally legislate (i.e., successful employment) is directly impacted.<sup>12</sup>

8 *The Supreme Court of the United States Distinguished Live Participation from Remote Participation*  
9 *in the First Amendment Contest in Diocese of Brooklyn*

10 Representative-Plaintiffs must be allowed the same freedoms and resources available to other  
11 similarly situated representatives. *Diocese of Brooklyn* remains the centerpiece for this analysis as the  
12 Court distinguished in-person attendance at a religious ceremony from live viewing via television or  
13 other electronic means, as follows:

14 If only 10 people are admitted to each service, the great majority of those who wish to  
15 attend Mass on Sunday or services in a synagogue on Shabbat will be barred. And while  
16 those who are shut out may in some instances be able to watch services on television,  
such remote viewing is *not the same as personal attendance*.<sup>13</sup>

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20 unvaccinated comparison group (p <0.001). Among persons aged 12–17 years, SMRs were similar among the Pfizer-  
BioNTech vaccine recipients and unvaccinated comparison groups (p = 0.68 after dose 1 and 0.89 after dose 2).”

21 <sup>11</sup> Dr. Anthony Fauci interview, November 21, 2021, available at: [https://abcnews.go.com/ThisWeek/fauci-fully-](https://abcnews.go.com/ThisWeek/fauci-fully-vaccinated-definition-changing-include-boosters/story?id=81299248)  
22 [vaccinated-definition-changing-include-boosters/story?id=81299248](https://abcnews.go.com/ThisWeek/fauci-fully-vaccinated-definition-changing-include-boosters/story?id=81299248). “[F]ully vaccinated right now, by definition, is the  
original two doses [of] ... Pfizer and Moderna and a single dose with [the one-shot Johnson & Johnson]...” Last accessed:  
November 21, 2021.

23 <sup>12</sup> See *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1062 (6th Cir. 1998), holding: the interest in preserving one’s  
own life and personal security and bodily integrity constitutes a fundamental liberty interest. See also *Kennedy v.*  
24 *City of Ridgefield*, 439 F.3d 1055, 1061-62 (9th Cir. 2006) (“It is well established that the Constitution protects  
a citizen's liberty interest in her own bodily security.”) (citing *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977); *Wood*  
25 *v. Ostrander*, 879 F.2d 583, 589 (9th Cir. 1989)).

<sup>13</sup> *Diocese of Brooklyn*,. at 67-68 (emphasis added).

1 In *Diocese of Brooklyn*, the Supreme Court ruled that these restrictions were not narrowly tailored  
2 because they were “more severe than has been shown to be required to prevent the spread of the  
3 virus.”<sup>14</sup> The Court granted injunctive relief.

4 ///

5 Similarly, this Court should grant injunctive relief as the Plans are not narrowly tailored as  
6 each Plan prohibits the Representative-plaintiffs from active participation in workplace. The Interim  
7 Plan prohibits time on the Capitol Campus, which may be used to network, work with staff, research  
8 and draft legislation, engage in policy debates. The 2022 Plan prohibits Representative-plaintiffs from  
9 engaging in debate on the House floor, the very purpose for which they are elected; further, as Plaintiff  
10 Graham has stated, she is no longer able to use her “silent advocacy approach” in the legislative  
11 process by intentionally placing items on her Floor desk. Graham Dec. ¶¶ 8. Indeed, the value of access  
12 to the Capitol Campus before, during, and after a legislative session is critical to the success of the  
13 Plaintiff-Representatives. After all, “COVID-19 is not a blank check for a State to discriminate against  
14 religious people.”<sup>15</sup>

16 **The Plans create an undeniable violation of Freedom of Speech.**

17 The First Amendment provides that “Congress shall make no law ... abridging the freedom of  
18 speech...” The rights of free speech and peaceable assembly are fundamental rights which are  
19 safeguarded against State interference by the due process clause of the Fourteenth Amendment. *De*  
20 *Jonge v. Oregon*, 299 U.S. 353, 364, 81 L.Ed. 278, 57 S.Ct. 255 (1937). “[T]he First Amendment,  
21 subject only to narrow and well-understood exceptions, does not countenance governmental control  
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23 \_\_\_\_\_  
24 <sup>14</sup> *Id.* at 67.

25 <sup>15</sup> *Calvary Chapel Dayton Valley v. Sisolak*, 140 S.Ct. 2603, 2614 (2020) (mem.) ((Kavanaugh, J.,  
dissenting).

1 over the content of messages expressed by private individuals.” *Turner Broadcasting System, Inc. v.*  
2 *Federal Communications Comm'n*, 512 U.S. 622, 641, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994).

3 To guard against that threat the Constitution demands that content-based restrictions on speech  
4 be presumed invalid. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660, 124 S.Ct. 2783,  
5 159 L.Ed.2d 690 (2004). The first amendment reflects a national commitment to the principle that  
6 debate on public issues should be robust and uninhibited. Accordingly, speech on public issues  
7 occupies the highest position of the hierarchy of first amendment values and is entitled to special  
8 protection. *Snyder v. Phelps*, 562 U.S. 443, 451-52, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011).

9 In a public forum, the State may only impose time, place and manner restrictions upon all  
10 expression, whether written, oral or symbolized by conduct if the restrictions are content-neutral, are  
11 narrowly tailored to serve a significant government interest, and leave open ample alternative channels  
12 of communication. *Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647,  
13 69 L.Ed.2d 298, 101 S.Ct. 2559 (1981).

14 In this case, neither Plan is content-neutral as each *only* allows for speech consistent with the  
15 narrative as determined by the Executive Rules Committee – that full COVID vaccination is the *only*  
16 method to prevent the spread of COVID-19. The defendants created an Order that proscribes any  
17 speech to the contrary. An Order prohibiting speech based on content cannot survive First Amendment  
18 challenge.  
19

20 Additionally, the Executive Rules Committee’s narrative – that full COVID vaccination is the  
21 *only* method to prevent the spread of COVID-19 -- is belied by the facts including the number of  
22 break-through cases. Clearly “fully vaccinated” persons continue to spread and contract COVID.  
23 Because the narrative is not supported by the facts and because there are other, less invasive methods  
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1 of lessening the spread of COVID-19, the Plans cannot serve a compelling government interest.

2 The Plans also violate the Plaintiffs' right to free speech because medical decisions and  
3 decisions regarding one's own body are forms of expressive speech and must be protected. Conduct  
4 is expressive when the actor intends to communicate a particular message by his actions and that  
5 message will be understood by those who observe it because of the surrounding circumstances. *Spence*  
6 *v. Washington*, 418 U.S. 405, 410-11, 94 S.Ct. 2727, 2730-31, 41 L.Ed.2d 842 (1974).

7 Finally, the Plans violate the Plaintiffs' right to free speech because each Plan is overbroad.  
8 The first amendment overbreadth doctrine looks not at whether a law improperly regulates speech  
9 based on viewpoint or content but at the appropriate scope of the regulation. *See Osborne v. Ohio*, 495  
10 U.S. 103, 112, 110 S.Ct. 1691, 109 L.Ed.2d 98 (1990) (recognizing that, where a statute regulates  
11 expressive conduct, it may be found to be unconstitutionally overbroad if it "criminalizes an intolerable  
12 range of constitutionally protected conduct"). A facial challenge based on first amendment  
13 overbreadth is permitted out of concern that the threat of enforcement of an overbroad law may chill  
14 or deter constitutionally protected speech, particularly where the statute imposes criminal penalties.  
15 *Virginia v. Hicks*, 539 U.S. 113, 119, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003). In this case, each Plan  
16 prohibits a substantial amount of protected speech as each Plan proscribes all speech at House  
17 facilities, including proscribing duly elected Representatives from speaking on the House floor during  
18 session, for these undocumented Plaintiffs. These Plans also threaten disciplinary action against  
19 anyone who violates either Plan. Therefore, these Plans are facially invalid. *United States v. Williams*,  
20 553 U.S. 285, 292, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008). (Under the first amendment's overbreadth  
21 doctrine, "a statute is facially invalid if it prohibits a substantial amount of protected speech").  
22  
23

24 Even if the restrictions on speech can be seen as viewpoint neutral, that does not mean the  
25

1 Interim Plan is content-neutral.” [A] speech regulation targeted at specific subject matter is content  
2 based even if it does not discriminate among viewpoints within that subject matter.” *See Reed v. Town*  
3 *of Gilbert, Ariz.*, 135 S. Ct. 2218, 2230 (2015). “Innocent motives, moreover, do not eliminate the  
4 danger of censorship presented by a facially content-based statute, as future government officials may  
5 one day wield such statutes to suppress disfavored speech.” *Id.* at 2229. *Accord* Cass R. Sunstein,  
6 *Democracy and the Problem of Free Speech* 169 (1993) (“When government regulates content, there  
7 is a large risk that the restriction really stems from something illegitimate: an effort to foreclose a  
8 controversial viewpoint, to stop people from being offended by certain topics and views, or to prevent  
9 people from being persuaded by what others have to say.”).

10  
11 **The Plan are administrative act of the Executive Rules Committee,  
not legislative acts.**

12 Although the Plans are likely alleged to be a legislative act, thus escaping the purview and  
13 review of the courts, the facts demonstrate the Plans are administrative, not legislative acts. The Plans  
14 involved ad hoc decision making, only apply to a few Members (not the entire legislative body), were  
15 created by a few members of a legislatively created committee, and the Plans did not go through the  
16 proper procedures necessary to change the permanent rules of the House. Therefore, the Plans do not  
17 bear all the hallmarks of traditional legislation. Furthermore, the Plans clearly affects the voter-  
18 Plaintiffs’ protected right to equal protection, treatment, and representation.

19  
20 **The Plans violate the Plaintiffs’ right to equal protection and treatment under the law.**

21 The right to equal protection under the law guaranteed by the United States Constitution,  
22 amend. XIV, § 1, and by the privileges and immunities clause of the Washington Constitution, art. I,  
23 § 12, are substantially identical. *State v. Shawn P.*, 122 Wn.2d 553, 559-60, 859 P.2d 1220 (1993).  
24 Both require that persons similarly situated receive like treatment.  
25

1 Article I, §. 12 of the Washington Constitution provides “No law shall be passed granting to  
2 any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon  
3 the same terms shall not equally belong to all citizens, or corporations.” Section One of the Fourteenth  
4 Amendment provides, in pertinent part, that “[n]o state shall ... deny to any person within its  
5 jurisdiction the equal protection of the laws.”

6 Because of the Plans, Representative-Plaintiffs, duly elected, but undocumented legislators in  
7 the Washington State House of Representatives, are barred from accessing the Capitol Campus and  
8 district offices. These Representatives are also prohibited from House travel under the Interim Plan,  
9 thus preventing them from traveling to participate in meeting and events or visiting their constituents  
10 even though such obligations are part of the promises each Representative-Plaintiff made to their  
11 constituents and voters when elected.

12 Unlike similarly situated members of the House of Representatives, who are not prohibited  
13 from entering and using House facilities, the undocumented Representatives who are prevented from  
14 accessing the Capitol Campus, from attending committee meetings in person, and from meeting with  
15 voters at House facilities—under the Plans--have a diminished ability to carry out their legislative  
16 duties or fulfill the promises made to voters.

17 Additionally, and importantly, the members of the Senate and their staff are not subject to the  
18 either Plan. In fact, the Senate plan does not include similar oppressive and coercive vaccination  
19 requirements. Therefore, similarly situated legislators are receiving preferential treatment because  
20 Senate members and staff have the privilege of entering and using the Capitol Campus facilities  
21 regardless of vaccination status.

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**The Plans violate the Plaintiffs’ right of Petition and Assemblage.**

Article I, Section IV of the Washington Constitution, the Right of Petition and Assemblage provides that “The right of petition and of the people peaceably to assemble for the common good shall never be abridged.” This Right allows the People to petition their government for redress of grievances.

The right to petition is also protected by the United States Constitution through the Fourteenth and First Amendments. The right to petition for redress of grievances is one of the fundamental rights guaranteed by the First Amendment. *United Mine Workers v. Illinois State Bar Assn.*, 389 U.S. 217, 222, 88 S.Ct. at 353, 19 L.Ed.2d 426 (1967) (right to petition government for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights). “[P]eaceably expressing ... grievances” to legislative bodies is “an exercise of these basic constitutional rights in their most pristine and classic form.” *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963). By virtue of the Fourteenth Amendment, states may not prevent individuals from exercising this fundamental right. *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937).

A corollary to the right to petition for redress of grievances is the right to participate equally in the political process. *See Reynolds v. Sims*, 377 U.S. 533, 560, 566-68, 84 S.Ct. 1362, 1381, 1383-85, 12 L.Ed.2d 506 (1964) (concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged); *accord Evans v. Romer*, 854 P.2d 1270, 1276 (Colo.1993) (“the Equal Protection Clause guarantees the fundamental right to participate equally in the political process and . . . any attempt to infringe on an independently identifiable group’s ability to exercise that right is subject to strict judicial scrutiny”).

1 The Plans, by denying certain duly elected legislators the same rights given to other legislators,  
2 has interfered with plaintiff-Representatives' right to participate equally in the political process. The  
3 Plans also violate the constituents' constitutional right to participate in and have access to government,  
4 a right which is one of the "fundamental principle[s] of representative government in this country."  
5 *Reynolds v. Sims*, 377 U.S. 533, 560, 566-68, 84 S.Ct. 1362, 1381, 1383-85, 12 L.Ed.2d 506 (1964).  
6 "[T]he right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own  
7 rights of speech, press and political freedom." *Board of Education v. Pico*, 457 U.S. 853, 867, 102  
8 S.Ct. 2799, 2808, 73 L.Ed.2d 435 (1982).

9 Defendants impliedly assert that the forum does not matter and that virtual meetings are  
10 equivalent to in-person dialogue, but this is simply not true. "The very idea of a government,  
11 republican in form, implies a right on the part of its citizens to meet peaceably for consultation in  
12 respect to public affairs and to As the Plans prohibit duly elected Representatives from accessing and  
13 doing legislative business at the Capitol Campus, the seat of this state's government, the Plans directly  
14 violate the bedrock First Amendment right to petition and participate in the legislative process for  
15 redress of grievances as the voting public has can no longer contact these Representatives at the Capitol  
16 Campus or in their district offices. The free exchange of ideas is fundamental to democracy.  
17 Preventing some members from engaging in such discourse is not only a violation of their rights, it is  
18 a blight on our freedom as a society.

### 21 **Violation of uncommented Representatives' privacy and bodily autonomy**

22 All Plaintiffs have a right to body autonomy. At common law, even the touching of one person  
23 by another without consent and without legal justification was a battery. *Cruzan by Cruzan v. Dir.*,  
24 *Missouri Dep't of Health*, 497 U.S. 261, 269, 110 S. Ct. 2841, 2846, 111 L. Ed. 2d 224 (1990). "No  
25

1 right is held more sacred, or is more carefully guarded, by the common law, than the right of every  
2 individual to the possession and control of his own person, free from all restraint or interference of  
3 others, unless by clear and unquestionable authority of law.” *Union Pacific R. Co. v. Botsford*, 141  
4 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891). “The logical corollary of the doctrine of  
5 informed consent is that the patient generally possesses the right not to consent, that is, to refuse  
6 treatment.” *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 270, 110 S. Ct. 2841,  
7 2847, 111 L. Ed. 2d 224 (1990) This right, too, has been infringed by the Executive Rules Committee  
8 and Defendant Dean through the adoption and implementation of the Plans as the Plans mandate each  
9 mandate each Representative receive a shot to fully participate in his or her scope of employment,  
10 which includes public dialogue. By mandating such a shot for the full participation in one’s job scope,  
11 the Plans violate the right to informed consent and bodily integrity as each plaintiff-Representative’s  
12 choice to fulfill a promise to his/her constituents is contravened by his/her choice of bodily integrity.

### 14 CONCLUSION

15 Plaintiffs respectfully request that this Court declare the Interim Plan and the 2022 Plan  
16 unconstitutional and void. Plaintiffs further request that a Temporary Restraining Order issue,  
17 requiring the defendants to cease implementation of either Plan. In the alternative, Plaintiff’s  
18 respectfully request that a hearing be expeditiously held for a preliminary injunction. Specifically,  
19 Plaintiffs seek from this court:

- 20 A. A Declaration that the Interim Plan and the 2022 Plan is each Unconstitutional on face  
21 and as applied.
- 22 B. A Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction  
23 restraining the Clerk from and his subordinates from enforcing, directly or indirectly,  
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the Plans.

C. Attorney's fees and any other costs at the discretion of this Court.

D. Any other damages, awards, or equitable relief that this Court sees appropriate.

Dated this 22nd Day of November, 2021.

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