UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
Seattle Division

RUSSELL JOHNSON; JENNY DONNELLY; HER VOICE MOVEMENT, INC., d/b/a TETELESTAI MINISTRIES; ROBERT DONNELLY; ROSS JOHNSTON;

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON; BRUCE HARRELL, in his official capacity as Mayor of the City of Seattle, Washington; SHON BARNES, in his official capacity as Chief of Police for the Seattle Police Department;

Defendants.

Case No. 2:25-cv-1874-BJR

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Pursuant to Local Civil Rule 7(b)(2), Russell Johnson, Jenny Donnelly, Her Voice Action, Inc., Robert Donnelly; Ross Johnston; Ross Johnston Ministries (collectively "Plaintiffs") hereby file this Response in Opposition to Defendants' Motion to Dismiss. (Dkt. 17.) Defendants' Motion should be denied because Plaintiffs have plainly and plausibly alleged sufficient injury-in-fact and the other constitutional minimum requirements of standing to mount a facial and as-applied challenge to Defendants' permitting scheme and to obtain injunctive relief. Defendants' Motion must also be denied because Plaintiffs' well-pleaded allegations plainly and plausibly allege a claim for relief under the Establishment Clause.

ARGUMENT

I. Defendants impermissibly challenge the factual veracity of Plaintiffs' well-pleaded allegations in gross violation of the appropriate standard at this stage.

As to both Defendants' Rule 12(b)(1) and Rule 12(b)(6) contentions, the Court is required to accept as true the factual allegations of Plaintiffs' Verified Complaint. *Snyder & Assoc. Acquisitions LLC v. United States*, 859 F.3d 1152, 1156–57 (9th Cir. 2017) ("Because the government's motion was filed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), we accept as true all facts alleged in the complaint and construe them in the light most favorable to the plaintiffs, the non-moving party."). *See also Thomas v. Cnty. of Humboldt*, 124 F.4th 1179, 1186 (9th Cir. 2024) (same). Upon that highly deferential standard of review, taking Plaintiffs' allegations as true, and drawing all reasonable inferences in Plaintiffs' favor, "the court determines whether the allegations are sufficient as a legal mater to invoke the court's jurisdiction." *Snyder*, 859 F.3d at 1157. Plaintiffs have plainly alleged First Amendment injury that was traceable to Defendants' permitting scheme and application of it, and injunctive relief from this Court would redress those injuries. That is sufficient to invoke the Court's federal question jurisdiction and establish standing to pursue those claims.

"[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," but a plaintiff must meet his "obligation to provide the grounds of his entitlement to

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relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned up). This "do[es] not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face" and to "nudge [plaintiffs] claims across the line from conceivable to plausible." *Id.* at 570. "'A claim has facial plausibility when the plaintiff pleads content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Johnson v. Fed. Home Loan Mortg. Corp.*, 793 F.3d 1005, 1007 (9th Cir. 2015) (quoting *Ashcroft*, 556 U.S. at 678). Plaintiffs have easily satisfied that standard.

"Ordinarily a motion to dismiss should be disfavored, and doubts should be resolved in favor of the pleader." *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). "A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is **disfavored and rarely granted**." *Neveu v. City of Fresno*, 392 F. Supp. 2d 1159, 1168 (E.D. Cal. 2005) (emphasis added). "[T]he conditions that must be met before a motion may be granted under Fed. R. Civ. P. 12(b)(6) are quite strict." *Arroyo Vista Partners v. Cnty. of Santa Barbara*, 723 F. Supp. 1046, 1050 (C.D. Cal. 1990). This Court should grant a motion to dismiss only in a rare and extraordinary case. *Informix Software, Inc. v. Oracle Corp.*, 927 F. Supp. 1283, 1285 (N.D. Cal. 1996) ("In analyzing whether to grant a Rule 12(b)(6) motion, the court should keep in mind that dismissal is disfavored and should be granted **only in extraordinary cases**.") (emphasis added). This is not one of those rare instances.

Defendants' Rule 12(b)(1) challenge fails for the simple reason that they do not and cannot satisfy their burden of a facial attack on Plaintiffs' well-pleaded allegations. "A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction can either be a facial attack or a factual one." *Harborview Fellowship v. Inslee*, 521 F. Supp. 3d 1040, 1046 (W.D. Wash. 2021) (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). Only in a factual attack may a defendant call into question the factual allegations within a complaint. *Id.* However, in doing so, Defendants must also submit contradicting facts "by presenting affidavits or other evidence properly *** before the court[.]" *Id.*

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Defendants' Motion unquestionably fails this standard. Defendants did not and cannot submit any new evidence showing that Plaintiffs' federal constitutional challenges to the permitting scheme and Defendants' application of it is unconstitutional. Rather, Defendants merely point to the Plaintiffs' Verified Complaint and say Plaintiffs' well-pleaded allegations are false and incorrect. For example, Defendants contend that Plaintiffs' well-pleaded allegations are incorrect because Defendants' denial of the requested permit had nothing to do with viewpoint. (Dkt. 17, 6.) Defendants leave no question about their contentions because they explicitly state their belief that "Plaintiffs' assertions . . . are false." (Dkt. 17, 7.) That is not a proper factual attack, and it is an improper assertion on a motion to dismiss. Therefore, the Court must treat Defendants' motion to dismiss as a facial attack. "'In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.' The truth of the complaint's allegations is **presumed**." *Harborview Fellowship v. Inslee*, 521 F. Supp. 3d at 1046 (emphasis added). Defendants' protestations to the veracity of Plaintiffs' factual allegations are thus due to be, and must be, ignored by the Court.

In addition to not being a proper attack, Defendants' contentions are factually incorrect and plainly contradicted by the sworn evidence before the Court. As explicitly contemplated by the permitting scheme, Defendants farmed out approval for Plaintiffs' requested permit to non-government entities.(Dkt. 1, ¶¶76–77.) And it was the non-government entities who determined that Plaintiffs' permit would be denied on the basis that it was a religious worship service. (Dkt. 1, ¶¶71–73, 83, 86.) Though Defendants contend that the denial of Plaintiffs' permit was all about safety and traffic for local businesses (and not their religious viewpoint) (dkt. 17, 6), Plaintiffs specifically informed Defendants that "they would do whatever is necessary to ensure there was no impact on the businesses or public." (Dkt. 1, ¶84.) Plaintiffs were not given that option because Defendants and their non-government censorship designees objected to the religious event that occurred the prior year. (Dkt. 1, ¶¶70, 71, 79.) This raises the precise specter of discrimination that *City of Lakewood v. Plain Dealer Publishing Company* forbids, and it is certainly sufficient to

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demonstrate a reasonable inference that it was Plaintiffs' religious viewpoint that caused the denial of their permit. 486 U.S. 750, 759 (1988). There, the Court noted that the First Amendment is violated by a system that permits "the licensor [though] he does not necessarily view the text of the words about to be spoken, but can measure their probable content or viewpoint by speech already uttered." *Id.* at 759. The problem with this system is that "[a] speaker in this position is under no illusion regarding the effect of the licensed speech on the ability to continue speaking in the future." *Id.* at 760. Defendants' application of the permitting scheme raised this precise specter by explicitly denying Plaintiffs' proposed permit on the basis of alleged concerns over past religious speech. (Dkt 1, ¶¶70, 71.) In other words, the denial was content and viewpoint based. Plaintiffs' well-pleaded allegations plainly and plausibly alleged First Amendment injury. Defendants' motion to dismiss improperly contests factual allegations, attempts to have inferences drawn in Defendants' favor that are directly contradicted by the sworn allegations of Plaintiffs' Verified Complaint, and fails under the proper standard of review.

Defendants' Rule 12(b)(6) motion fails for a similar, albeit even easier, reason. Defendants cannot—as a matter of long-settled and black letter law—contest the veracity of Plaintiffs' well-pleaded allegations. Plaintiffs' factual allegations are to be "accepted as true," and this Court must "assume their veracity[.]" 556 U.S. at 678–79. The Court's sole focus in a motion to dismiss is to "determine whether [the alleged facts] plausibly give rise to an entitlement of relief." *Iqbal*, 556 U.S. at 679. There is no question that they do. Under the proper standard, Defendants' contentions that "Plaintiffs' assertions about the City's 'permitting scheme' are demonstrably false. SMC § 15.52 does not reach a substantial amount of protected activity," (dkt. 17, 7), are not even to be considered. Defendants' protestations about the face of their permitting scheme, or their application of it, are of no moment. Simply put, Defendants' contentions that Plaintiffs' well-pleaded allegations are false are plainly improper. Plaintiffs' well-pleaded allegations plainly and plausibly state that (a) the permitting scheme is an unconstitutional prior restraint, that it fails to cabin the discretion of government officials (and, here, non-government actors) to deny access to

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a traditional public forum on the basis of religious content and viewpoint, and (b) that Defendants' application of it infringed Plaintiffs' First Amendment rights. That is sufficient for Article III standing in the First Amendment context.

Defendants' assault on Plaintiffs' well-pleaded allegations are improper at the motion to dismiss stage, are insufficient to remove the federal question jurisdiction this Court has over Plaintiffs' claims, and cannot and do not demonstrate that Plaintiffs' well-pleaded Verified Complaint is incapable of obtaining plausible relief. Defendants' Motion must be denied.

II. Plaintiffs plainly and plausibly alleged every requirement of the irreducible constitutional minimum of Article III standing for injunctive relief.

Leaving aside the threshold pleading infirmities and plainly improper factual challenges to Plaintiffs' well-pleaded allegations, Defendants contentions that Plaintiffs lack standing to bring their claims for injunctive relief are plainly incorrect. (Dkt. 17, 4.)

A. Plaintiffs have adequately and sufficiently alleged First Amendment injury from the face of Defendants' permitting scheme to permit a facial challenge.

Defendants contend that Plaintiffs cannot satisfy the injury requirement for a facial challenge. (Dkt. 17, 4.) This is plainly and demonstrably incorrect. First, Defendants astoundingly ignore that "First Amendment cases raise unique standing considerations that tilt dramatically toward a finding of standing." *Lopez v. Candaele*, 630 F.3d 775, 781 (9th Cir. 2010). *See also Santa Monica Food Not Bombs v. City of Santa Monica,* 450 F.3d 1022, 1033 (9th Cir. 2006) ("special standing principles apply in First Amendment cases"); *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1000 (9th Cir. 2010) ("[W]hen a challenged statute risks chilling the exercise of First Amendment rights, the Supreme Court has dispensed with rigid standing requirements[.]"). Defendants' motion falters out of the gate by ignoring this precedent, and it never recovers.

The reason for this is simple: as a matter of binding law, "our cases have long recognized that when a licensing statute **allegedly** vests unbridled discretion in a government official over

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whether to permit or deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for and being a denied a license." *City of Lakewood*, 486 U.S. at 755–56 (emphasis added). Two things are of particular import here: (1) a Plaintiff need only **allege** that the permitting scheme vests unbridled discretion in order to challenge it facially, and (2) a facial challenger need not even apply and be denied before bringing that facial challenge. Plaintiffs easily satisfy this threshold. Plaintiffs have plainly alleged that the permitting scheme vests unbridled discretion in the hands of Defendants and non-government actors. (Dkt. 1, ¶¶18, 47–60, 150–154.) That alone is sufficient to give Plaintiffs standing to challenge the permitting scheme on its face. *E.g.*, *Diamond S.J. Enter., Inc. v. City of San Jose*, 100 F.4th 1059, 1065 (9th Cir. 2024) ("A plaintiff has standing to vindicate First Amendment rights through a facial challenge when it argues that an ordinance impermissibly restricts a protected activity."); *id.* (holding that a plaintiff had standing to bring a facial challenge "[b]ecause Diamond alleges that the Nuisance Provisions target entertainment businesses and vest unbridled discretion in government officials to limit First Amendment activity"); *Real v. City of Long Beach*, 852 F.3d 929, 933 (9th Cir. 2017) ("[A] plaintiff has standing to vindicate his First Amendment rights through a facial challenge when he argues that an ordinance impermissibly restricts a protected activity."). Defendants' contentions that Plaintiffs cannot mount a facial challenge to the constitutionality of Defendants' permitting scheme is simply incorrect. The face of the permitting scheme alone, coupled with Plaintiffs' allegations that it vests unbridled discretion in the hands of government officials, is sufficient to demonstrate and satisfy Article III's standing requirements.

B. Plaintiffs plainly and plausibly alleged that Defendants' application of their permitting scheme caused them First Amendment injury sufficient to permit an as-applied challenge.

As a threshold matter, because Plaintiffs satisfy Article III standing requirements to mount a facial challenge, they likewise have standing to mount a challenge to Defendants' application of it. Indeed, "facial challenges may be paired with as-applied challenges." *Real*, 852 F.3d at 933.

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Defendants contend that even if Plaintiffs satisfy the requirements for a facial challenge, they have not adequately pleaded standing to bring an as-applied claim. (Dkt. 17, 8.) This, too, is incorrect.

"To establish Article III standing to challenge a law as applied to him, a plaintiff must allege (1) a distinct and palpable injury-in-fact that is (2) fairly traceable to the challenged provision of interpretation and (3) would likely be redressed by a favorable decision." *Real*, 852 F.3d at 934. There is no question Plaintiffs' well-pleaded allegations demonstrate First Amendment injury sufficient to permit an as-applied challenge.

"In an as-applied First Amendment challenge, the plaintiff must identify some personal harm resulting from application of the challenge statute or regulation." *Preminger v. Peake*, 552 F.3d 757, 763 (9th Cir. 2008). Plaintiffs easily pleaded injury in fact. Plaintiffs alleged that they desired to host their event on Pike Street and applied for a permit to do that. (Dkt. 1, ¶61.) Plaintiffs requested the location due to its prominence and the ability to effectively communicate their message to their intended audience. (Dkt. 1, ¶62.) Plaintiffs permit was denied and their chosen message to their chosen audience was stifled. (Dkt. 1, ¶86 ("Your proposed use of Pike Street . . . is being denied.").) That **alone** is First Amendment injury. *Elrod v. Burns*, 427 U.S. 347, 376 (1976) ("Loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Moreover, Plaintiffs have alleged that the basis for the denial of their requested permit at the requested location was their religious viewpoint and content. (Dkt. 1, ¶¶67–69, 71–73, 78–79.) Defendants' only retort to these well-pleaded allegations is to state that "Plaintiffs do not, and cannot, allege that they were denied their permit." (Dkt. 17, 9.) This is nonsense, and it is contradicted by the allegations and sworn evidence before the Court. Plaintiffs have suffered an injury-in-fact by having their permit denied for their preferred location. Defendants' contentions are akin to those adopted by the district court in *Real*, and which the Ninth Circuit roundly rejected on appeal. 852 F.3d at 934 ("The district court held that Real lacked standing to bring an as-applied challenge because he did not adequately allege an injury-in-fact."). And the district court based

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that determination on the fact that the plaintiff had not been denied a permit at every location in the city. *Id.* As the Ninth Circuit held, the plaintiff "was not required to apply for a [permit] to operate *anywhere* in Long Beach to suffer an injury." *Id.* (emphasis original). Plaintiffs requested and were denied a permit for a specific location. That is sufficient to demonstrate an as-applied injury under Defendants' permitting scheme.

Additionally, Plaintiffs have alleged not only that their permit was denied for Pike Street, but that their speech was silenced on the basis of an unconstitutional heckler's veto. The "heckler's veto doctrine applies when particular, protected speech is 'met by violence or threats or other unprivileged retaliatory conduct." *Id.* (quoting *Zamecnik v. Indian Prairie Sch. Dist. #204*, 636 F.3d 874, 879 (7th Cir. 2011)). "[E]very appellate decision applying the heckler's veto doctrine of which we are aware involved the restriction of particular speech due to listeners' **actual** or anticipated hostility to that speech." *Id.* (emphasis added). Defendants' contentions are quite curious when compared to *Meinecke v. City of Seattle*, 99 F.4th 514 (9th Cir. 2024), in which these **same Defendants** raised these **same contentions** to resounding defeat in the Ninth Circuit. There, Seattle resisted the characterization of its actions as a heckler's veto by "repeatedly referring to its actions as time, place, or manner restrictions." *Id.* at 523. Defendants, here, constantly resort to the same refrain. (*E.g.*, dkt. 18, 9–10.) But, as the Ninth Circuit already held against these Defendants, "incanting the words 'time,' 'place,' and 'manner' over a content-based restriction does not transmute it into one that is content neutral." 99 F.4th at 523. And, as here, content-based they were. "The City's enforcement actions against Meinecke are content-based heckler's vetoes." *Id.* at 522. "In fact, it is apparent from the facts . . . that the Seattle police directed Meinecke to leave the area because of the reaction his Bible-reading provoked at the *Dobbs* and Pride-Fest protests." *Id.* at 522–23. It was not a response to anticipated reaction that made Defendants' actions a heckler's veto, but the silencing of protected speech in response to actual violent reaction to the speaker. *Id.* at 523 (noting that the speaker was silenced to allegedly "restore public order and

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prevent further violence," and was "the direct result of assaults on Meinecke" and "prompted by physical altercations.").

The same is true here, and Defendants' actions constitute injury-in-fact under the First Amendment. At Plaintiffs' event, violent protestors assaulted Plaintiffs, their attendees, and volunteers. (Dkt. 1, ¶93.) Did Defendants' officers arrest those violating the law and assaulting those engaged in protected speech? No. Defendants did exactly what they did in *Meinecke* and shut down Plaintiffs' protected speech because of "violent protestors." (Dkt. 1, ¶¶94–114.) Just as in *Meinecke*, "there is no evidence of any protestor being arrested for physical altercations and threats of violent behavior, including those who seized and ripped his Bible, poured water on him, took his shoes, and physically carried him across the street." 99 F.4th at 523. No arrests were made of the violent thugs who threw urine-filled water balloons and full water bottles at Plaintiffs, sprayed them with pepper-spray and tear gas, brandished weapons, ripped their banners, and destroyed their equipment. (Dkt. 1, ¶¶99, 101–114.)

The violence against protected speech and speakers was identical in *Meinecke* and here. Defendants' response to that violence (*i.e.*, silencing a speaker) was identical in *Meinecke* and here. And the result obtained should be identical to *Meinecke*. Binding Ninth Circuit precedent demands a finding the Defendants' actions in silencing speech in response to violence against the speakers was a "content-based heckler's veto." 99 F.4th at 523. "At both events, the Seattle police targeted Meinecke's speech only once the audience's hostile reaction manifested. **That is part and parcel of a heckler's veto**." *Id.* at 523–24 (emphasis added). Defendants' contentions to the contrary are utterly lacking in merit and must be rejected as a matter of binding law. Plaintiffs' allegations plainly and plausibly allege an injury-in-fact.

In an attempt to save the permitting scheme, the ordinance purports to limit Defendants' ability to consider the "programming content of the event or message that the proposed event may convey." (Dkt. 1, ¶51.) Defendants did just that, denying Plaintiffs' application to host their event on Pike Street because the "location is not ideal for your worship event." (Dkt. 1, ¶67.) Plaintiffs

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requested Pike Street "due to its prominence and the ability to reach Plaintiffs intended audience most effectively." (Dkt. 1, ¶62.) Instead, Plaintiffs were forcibly redirected to Cal Anderson Park, (dkt. 1, ¶88), limiting their ability to reach their intended audience in the heart of Seattle. During the event, Defendants threatened to revoke Plaintiffs' permit not because of Plaintiffs' actions (which would have been contemplated by the scheme) but because they had not properly staffed police officers for the event and could not control violent protestors (which was not contemplated by the scheme). (Dkt. 1, ¶¶91–114.) These allegations further demonstrate that Plaintiffs have pleaded a sufficient injury-in-fact to mount an as-applied challenge to Defendants' permitting scheme and to obtain injunctive relief against it.

Defendants' only retort to the import of Plaintiffs' well-pleaded allegations is to suggest that *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), precludes a finding of standing here. (Dkt. 17, 8.) Defendants point to *Lyons* and suggest that a Fourth Amendment chokehold incident "is on all fours" with this case. (Dkt. 17, 10.) One searches in vain to find how that can possibly be. *Lyons* has no application to this issue. The issue in *Lyons* was that it was nearly impossible to plead that police officers will always act unconstitutionally and choke a person to unconsciousness without provocation. *Lyons*, 461 U.S. at 108. The Fourth Amendment analysis is wholly inapposite here because, under the First Amendment, Plaintiffs need not plead that government officials will always act unconstitutionally. In the First Amendment context, the presumption works the other way because "[t]he mere existence of the licensed unfettered discretion, coupled with the power of prior restraint, intimidates parties into censoring their own speech, **even if the discretion and power are never actually abused**." *City of Lakewood*, 486 U.S. at 750 (emphasis added). In other words, in stark contrast to *Lyons*, the existence of an allegedly unconstitutional policy alone is sufficient to state a claim without need of alleging that Defendants will always apply it unconstitutionally. The injury is inherent in the existence of the permitting scheme. End of story.

As the Ninth Circuit has made plain, "we do not require plaintiffs to specify when, to whom, where, and under what circumstances they plain to violate the law" when the ordinance being

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challenged and that was previously enforced against them still exists. *Meinecke*, 99 F.4th at 520. The threat of enforcement of Defendants' permitting scheme is inherent in its past silencing of Plaintiffs' speech on the basis of a heckler's veto and in Defendants' continued and vigorous defense of its permitting scheme here. *Real*, 852 F.3d at 934. Here, Plaintiffs have made clear that they have sincere religious beliefs that require them to speak out and to do so in the public square. (Dkt. 1, ¶¶186–192.) Thus, Plaintiffs have plainly and plausibly alleged an intention to continue to engage in protected speech in the future, and against which Defendants' permitting scheme would be applied. And Defendants' vigorous defense of the permitting scheme along with Defendant Harrell's statements that the City was to review Plaintiffs' applications and processes to ensure this does not happen again demonstrate credible threats of enforcement in the future. Thus, Plaintiffs have adequately alleged standing sufficient to bring an as-applied challenge.

C. Plaintiffs plainly and plausibly alleged that their injuries are caused by the permitting scheme and Defendants' application of it, and that injunctive relief would redress their First Amendment injuries.

As to the final requirements for Article III standing in the First Amendment context, Plaintiffs' well-pleaded allegations easily satisfy the fairly traceable and redress requirements. *See Real*, 852 F.3d at 934 n.2. Plaintiffs desire to be able to conduct speech in the traditional public forums in Seattle but are subject to a permitting scheme that has been previously weaponized against them to silence their speech and deny their permit. (Dkt. 1, ¶¶61–91.) And a decision finding that permitting scheme and Defendants' application of it to be unconstitutional would likely redress their injuries. *Real*, 852 F.3d at 934 n.2 ("Real readily meets the second and third prongs of the standing analysis. His alleged inability to open a tattoo shop is fairly traceable to the zoning ordinances governing the locations and permitting the tattoo shops, and a decision finding those laws unconstitutional would likely redress his injury because he is able to open a tattoo shop without the current restrictive requirements.") Redressability requires the injury "be likely, as opposed to merely speculative," and "that the injury will be redressed by a favorable decision."

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Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (citation modified). Plaintiffs have plainly alleged that their injuries are traceable to Defendants' permitting scheme and its application (dkt. 1, ¶¶137–146), and the injunction and relief Plaintiffs request would redress those injuries.

Defendants argue that there is an insufficient nexus between the alleged harm and the requested relief (dkt. 17, at 10), labeling Plaintiffs' requested relief as an "obey the law" injunction. (*Id.* at 11.) This is incorrect factually and irrelevant legally. As the Defendants aptly noted, the Ninth Circuit has "not adopted a rule against 'obey the law' injunctions per se." *Id.* (quoting *F.T.C. v. EDebitPay, LLC*, 695 F.3d 938, 944 (9th Cir. 2012)). Plaintiffs do not ask for one.

An "obey the law" injunction contains "[b]road, non-specific language that *** does not give the restrained party fair notice of what conduct will risk contempt." *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1531 (11th Cir. 1996). An example of an obey the law injunction is "Defendant shall not discharge stormwater *** *if such discharge would be in violation of the Clean Water Act*." *Id.* That is not what Plaintiffs request here, and Plaintiffs' requested injunction would clearly define the rights and obligations of Defendants here, namely an injunction that *inter alia* requires Defendants to amend the permitting scheme to comport with the constitutionally required minimum procedural safeguards, such as timely responses, limitations on content and viewpoint discrimination, and application of fees. (Dkt. 1, at 37–39.) Indeed, Plaintiffs' requested injunction articulates eight specific requirements that Defendants must comply with and is a far cry from "follow the law." Each one of Plaintiffs' requested provisions in the preliminary and permanent injunctions would provide Defendants "an operative command capable of 'enforcement.'" *Hughey*, 78 F.3d at 1531 (quoting *Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 73–74 (1967)). Defendants' contentions to the contrary are without merit.

III. Plaintiffs have plainly and plausibly alleged a violation of the Establishment Clause.

Defendants contend that Plaintiffs' Establishment Clause claim does not "pass even the laugh test." (Dkt. 17, 12.) Leaving Defendants' aspersions aside, it is Defendants who fundamentally misunderstand the Establishment Clause and its demands that the government not

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display hostility towards religion. Plaintiffs' well-pleaded allegations plainly and plausibly allege a violation of the Establishment Clause, and Defendants' motion should be denied.

A. The Establishment Clause prohibits hostility towards religious viewpoint.

Defendants focus solely on the Establishment Clause's prohibition of making religious observance compulsory. (Dkt. 17, 14–15.) To be sure, the Establishment Clause prohibits compulsory adherence to religion. But that is not all it does. Government may not be hostile towards religion. Indeed, the Supreme Court and the Ninth Circuit have held that the Establishment Clause is "violated as much by government disapproval of religion as it is by government approval of religion." *Vernon v. City of L.A.*, 27 F.3d 1385, 1396 (9th Cir. 1994); *see also, e.g.*, *Epperson v. State of Arkansas*, 393 U.S. 97, 104 (1968) ("[Government] may not be hostile to any religion[.]"); *Foothills Christian Ministries v. Johnson*, 148 F.4th 1040, 1053 (9th Cir. 2025) ("Government action that expresses hostility towards a plaintiff's religion, coupled with a sufficient connection between the plaintiff and that action, inflicts an [Establishment Clause] injury that can satisfy Article III[.]"). It is clear, as Plaintiffs alleged, that Defendants disapprove of their religion and religious beliefs. (*See* dkt. 1, ¶117 ("Today's far-right rally *** promot[ed] beliefs that are inherently opposed to our city's values[.]").)

B. Plaintiffs plainly and plausibly alleged Defendants demonstrated hostility to their religious viewpoint.

Defendants claim the permitting scheme facially and as applied does not "disfavor[] Plaintiffs' religion." (Dkt. 17, 15.) This is plainly incorrect. Both Defendants' denial of Plaintiffs' requested permit and the post-denial statements by Defendant Harrell are laden with religious hostility. Defendants contend that Plaintiffs' religion was not relevant to the permit denial. (Dkt. 17, 15). The evidence before the Court shows differently. As explicitly contemplated by the permitting scheme, Defendants farmed out approval for Plaintiffs' requested permit to non-government entities.(Dkt. 1, ¶¶76–77.) And it was the non-government entities who determined that Plaintiffs' permit would be denied. (Dkt. 1, ¶¶83, 86.) The ultimate justification given by

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Defendants and their nongovernment designees was that prior religious events made Plaintiffs' requested location "not ideal for your worship event," (dkt. 1, ¶67), that the unmistakable import of Defendants' denial of the requested permit was that they did not want Plaintiffs' religious event to take place at the requested location, and that past religious events were the cause. (Dkt. 1, ¶¶72, 74.) Those allegations are alone sufficient to demonstrate that it was religious hostility that resulted in the denial of the permit. So, the permitting scheme and Defendants' application of it prior to the even demonstrate overt hostility towards Plaintiffs' religious beliefs and plainly and plausibly entitle Plaintiffs to relief.

Moreover, Defendants' after-the-fact statements and actions further demonstrate hostility towards Plaintiffs' religious beliefs in violation of the Establishment Clause. As the sworn evidence before the Court demonstrates, Defendants blamed Plaintiffs for the violence perpetrated against them, rather than punishing those who broke the law in assaulting them. (Dkt. 1, ¶¶115–116.) Defendant Harrell noted that the violence was (somehow) the natural response to Plaintiffs' religious speech because it is purportedly "inherently opposed to our city's values, in the heart of Seattle's most prominent LGBTQ+ neighborhood." (Dkt. 1, ¶117.)

Finally, Defendant Harrell's statements and official condemnation of Plaintiffs' religion went even further by trotting out other religious sects and leaders of those sects to condemn Plaintiffs' religious speech. Preferring certain religious sects over others is plainly violative of the Establishment Clause. "[I]t is surely true that that Establishment Clause prohibit government from . . . favor[ing] the adherents of any sect or religious organization." *Gillette v. United States*, 401 U.S. 437, 449 (1971); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 855 (1995) ("the Establishment Clause forbids not only government preferences for some religious sects over others, but also government preference for religion over irreligion" (Thomas, J., concurring)). Defendant Harrell ran roughshod over this principle by dispatching his preferred religious groups and leaders to publicly condemn Plaintiffs' religion by espousing the alleged tenets of those religious sects' beliefs as somehow superior or more worthy of protection than

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Plaintiffs. (Dkt. 1, ¶¶122–136). Some of these "preferred religious sects" called Plaintiffs' religion "extremists," "misguided," "ungodly," and "vicious." (*Id.*) Those statements came from Defendant Harrell's preference for religious sects that purportedly align with his and the City's views and demonstrated his hostility towards Plaintiffs' religion. Plaintiffs' well-pleaded allegations concerning those statements are alone sufficient to plausibly allege an Establishment Clause violation. Defendants' motion must be denied.

Curiously, Defendants' only retort to this entrenched law is reference to *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152 (9th Cir. 2022) and *Miller v. City of Burien*, No. 2:24-cv-1301-BJR, 2025 WL 371874, at *2 (W.D. Wash. Feb. 3, 2025). (Dkt. 17, 13.) There is just one fundamental problem with these references: they have nothing to do with the Establishment Clause and certainly do not stand for the proposition that Defendants' explicit hostility towards Plaintiffs' religious viewpoint somehow mandates dismissal of Plaintiffs' Establishment Clause claim. In *Waln*, the plaintiffs only brought Free Exercise and Free Speech claims. *See Waln v. Dysart Sch. Dist.*, 54 F.4th 1152 (9th Cir. 2022). In *Burien*, a case this Court is undoubtedly familiar with, the plaintiff brought claims under the Free Exercise Clause, the Due Process Clause, RLUIPA, and other state law claims, but not an Establishment Clause claim. *See Miller v. City of Burien*, No. 2:24-cv-1301-BJR, 2025 WL 371874, at *2 (W.D. Wash. Feb. 3, 2025). One wonders how precedent having nothing to do with the Establishment Clause supports dismissing a well-pleaded and plausible Establishment Clause violation. The answer is simple: *it doesn't*. Defendants' motion must be denied.

CONCLUSION

Because Plaintiffs' well-pleaded allegations plainly and plausibly allege standing to mount a facial and as-applied challenge to Defendants' permitting scheme and application of it, and because Plaintiffs have plainly and plausibly alleged a violation of the Establishment Clause, Defendants' Motion must be denied.

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Respectfully submitted,

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