

The Honorable \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK F. CANFIELD, on behalf of all persons )  
similarly situated, )

Plaintiffs, )

v. )

CHIEF JOHN R. BATISTE of the Washington )  
State Patrol, in his individual capacity, )  
ASSISTANT CHIEF GREGORY E. MILLER )  
of the Washington State Patrol, in his )  
individual capacity; CAPTAIN JEFFREY )  
SASS of the Washington State Patrol, in his )  
individual capacity; JOHN AND JANE DOE )  
Defendants 1-25, in their individual capacities, )

Defendants. )

No. 3:11-cv-05994

MOTION FOR EX PARTE TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

CLASS ACTION

**ORAL ARGUMENT REQUESTED**

**Note on Motion Calendar: December 5,  
2011; Emergency Hearing Requested**

**I. INTRODUCTION**

Plaintiff Mark F. Canfield received a “Trespass Warning” banishing him from the Capitol grounds in Olympia, where Washington’s elected leaders conduct their public business. Because “every moment’s continuance” of this ban “amounts to a flagrant, indefensible, and continuing violation of the First Amendment,” Canfield asks this Court to issue a temporary restraining order against the ban. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (Black, J., concurring).

Canfield was banished from the Capitol grounds, or “Capitol Campus,” for 30 days, the entire period of the current special legislative session. The ban was issued without any process and cannot be appealed. If he violates the ban by appearing anywhere on the Capitol grounds,

1 including nearby outdoor spaces and public parks, he may be arrested, even if he is engaged in  
 2 otherwise lawful, constitutionally protected speech or assembly. If his elected representatives  
 3 invite him to their offices, he can be arrested for accepting that invitation.

4 Officers of the Washington State Patrol have issued countless similar warnings to  
 5 persons attempting to exercise their rights to freely speak, assemble, petition, write, and  
 6 publish—banishing them from the Capitol Campus for 30 days in some cases and for 1 year in  
 7 others. These banishments are an unconstitutional prior restraint—that is, a government order  
 8 preventing a citizen from speaking. Because Canfield and the proposed Class are suffering  
 9 irreparable harm to fundamental constitutional rights, because they are likely to succeed on  
 10 their claims, and because entering an order would be equitable and in the public interest, this  
 11 Court should enjoin Defendants and their agents from issuing the Warnings, from threatening  
 12 to arrest individuals for exercising their First Amendment rights, and from actually arresting  
 13 individuals for exercising those rights in purported violation of these unlawful Trespass  
 14 Warnings.

## 15 II. FACTS<sup>1</sup>

### 16 A. The Circumstances Leading to Canfield's Receipt of a Trespass Warning.

17 On Monday, November 28, 2011, Plaintiff Canfield traveled to Olympia to participate  
 18 in and cover a political protest organized by a coalition of many different groups. The groups  
 19 wanted to voice their opposition to proposed state budget cuts to public safety, education, and  
 20 social services programs. (Declaration of Mark F. Canfield at ¶ 3.)

21 Canfield was interested in the events in Olympia not only as a citizen but also as a  
 22 freelance journalist. Among other experience, Canfield has been a news host and reporter at  
 23 KBCS radio and a reporter for Free Speech Radio News; he writes articles for Huffington Post  
 24 and blogs for the Daily Kos website; and he reports as a correspondent for two nationally  
 25 syndicated radio shows, the Thom Hartmann show and the Norman Goldman show. On

26 \_\_\_\_\_  
<sup>1</sup> The facts here are supported by Canfield's declaration, filed herewith, as well as by the allegations of his  
 Complaint.

1 November 28, Canfield carried a press badge on his person, which displayed his picture and  
2 was signed by the news director of KBCS radio. This credential is commonly acknowledged  
3 by governmental and other organizations. (*Id.* at ¶ 4.)

4 After holding an outdoor rally at Sylvester Park, a public park on the Capitol Campus,  
5 the protestors entered the Legislative Building, with Canfield following them to observe,  
6 report, and participate. (*Id.* at ¶ 5-6.) Sometime between 3:30 pm and 4:00 pm, Canfield spoke  
7 on the Norman Goldman radio show to report on the protest. After the call, Canfield traveled  
8 the balconies and halls of the Legislative Building, observing the protest and making notes.  
9 The mood was peaceful and celebratory. (*Id.* at ¶ 8.)

10 Around 5:30 pm, Canfield saw a large group of Washington State Patrol officers  
11 gathered just inside the Legislative Building’s front doors. Not long thereafter, Canfield  
12 noticed an employee of the Department of Enterprise Services—the state agency that maintains  
13 the Capitol grounds—telling protestors, “I’m just informing you that the Building is now  
14 closed.” When Canfield asked the employee whether the protestors would be arrested if they  
15 remained in the Building, the employee would not answer his question. (*Id.* at ¶ 9.)

16 Around 6:00 pm, a Washington State Patrol officer announced by bullhorn that if  
17 persons chose not to leave the Legislative Building, they might be subject to arrest. Canfield  
18 stayed in the Legislative Building. Journalists from a number of outlets also stayed to report on  
19 the protests, and Canfield observed a television camera man move away from the officers to  
20 keep filming. (*Id.* at ¶ 10.) After the announcement, protestors began to gather around a  
21 Christmas tree in the lobby of the Building. Canfield approached them to observe, and then  
22 finally sat down nearby. (*Id.* ¶ 12.)

23 Canfield observed the officer with the bullhorn directing other officers to arrest  
24 particular individuals by pointing to them, after which other officers would go and carry them  
25 away. (*Id.* at ¶ 13.) Eventually, the officer with the bullhorn approached Canfield and asked if  
26 he was going to leave the Building. His press badge was clearly visible. When Canfield  
responded, “No, sir,” to that question, the officer motioned to four other officers, who

1 approached, picked Canfield up off the ground—with a different officer hanging on to each of  
 2 his four limbs—and carried him down some stairs and to a nearby hallway. Canfield made no  
 3 resistance. (*Id.* at ¶ 14.)

4 Canfield was made to stand up against a wall. (*Id.* at ¶ 15.) An officer then gave  
 5 Canfield a Trespass Warning, whose contents are described below. (*Id.* at ¶ 16.) The officer  
 6 asked Canfield to sign the Trespass Warning, but he told him that he would not sign anything  
 7 without first consulting an attorney. The officer wrote “refused” on the document and gave  
 8 Canfield the Trespass Warning. Canfield was then photographed holding up the Trespass  
 9 Warning in his hand, presumably so that the Washington State Patrol would know what he  
 10 looked like if he should return to the Capitol Campus. (*Id.* at ¶ 17.)

11 **B. The Contents of the Trespass Warning That Canfield and Others Like Him**  
 12 **Received.**

13 The Trespass Warnings read substantially as follows (the portions of the form that must  
 14 be filled in by hand are denoted by underlining):

15 I, (name), (date of birth), do hereby acknowledge that I have been notified by  
 16 (name) of the Washington State Patrol that from this day forward, I am  
 17 prohibited from entered the premise located at Washington State Capitol  
 18 Campus, Olympia, Washington, for: 30 days 1 year. I acknowledge that if  
 I do so, it could result in my arrest for Criminal Trespass in accordance with  
 RCW 9A.52.070 and 9A.52.080.<sup>2</sup>

19 There is a place for the recipient and the issuing officer to sign at the bottom of the form. The  
 20 “notifying” officer’s name was filled in on Canfield’s Trespass Warning as “Captain Sass.” A  
 21 copy of Canfield’s Trespass Warning is attached to his Declaration as Exhibit A. (*Id.* at ¶ 19.)

22 On Canfield’s Trespass Warning, the box labeled “30 days” was checked. Canfield has  
 23 no idea why the officers who filled out his Trespass Warning chose to check the “30 days”  
 24 rather than the “1 year” box. (*Id.* at ¶ 18.) Members of the Class have received Trespass  
 25 Warnings with one or the other box checked.

26 <sup>2</sup> Some of the Trespass Warnings received by members of the Class contain slight variations on “Washington State  
 Capitol Campus.” Many read, “Washington State Capitol Campus (Parks & Buildings),” while a few read,  
 “Capitol Rotunda.”

1 Other than by the descriptions that the officers fill in, the Trespass Warnings do not  
2 specifically identify the boundaries from which persons are excluded. It is plain, however, that  
3 the Trespass Warnings not only exclude persons from the Legislative Building—the Building  
4 that contains the Capitol Rotunda, the Governor’s office, and both legislative chambers, among  
5 other things—but they also purport to exclude persons entirely from the “Capitol Campus,”  
6 which includes outdoor public spaces and parks, such as Heritage Park and Sylvester Park.

7 The Trespass Warnings do not inform their recipients how the exclusion can be  
8 challenged by administrative or judicial process. The Washington State Patrol officers did not  
9 inform Canfield of any process by which his exclusion can be challenged. On information and  
10 belief, Canfield alleges that there is no process, whether pre-deprivation or post-deprivation, by  
11 which the exclusion can be challenged.

12 **C. The Consequences of Plaintiff’s Exclusion from the Capitol Grounds.**

13 Canfield had planned to attend the protests that occurred on the Capitol grounds from  
14 November 29 through December 2, and that appear likely to continue for some time (and  
15 *certainly* will continue through the weekend of December 3 and into the week of December 5).  
16 The Trespass Warning he received on November 28 has entirely prevented him from doing so.

17 Canfield is banned from attending the events on the Capitol grounds not only as a  
18 citizen, but also as a journalist. He had planned to do a live report for the Thom Hartmann  
19 radio show on Tuesday, November 29, as well as to report for Free Speech Radio News,  
20 Huffington Post, and the journalistic website Alternet. Besides these formal jobs, Canfield  
21 keeps in constant contact with other independent journalists, who value him for his up-to-date,  
22 on-the-ground reporting. Thus, the Trespass Warning has totally prevented Canfield from  
23 engaging in a swath of constitutionally protected speech—both as a private citizen and as a  
24 journalist.

25 The Washington State Patrol has itself acknowledged the impact of the Trespass  
26 Warnings. In a press release issued November 29, the day after Canfield received his Trespass  
Warning, Washington State Patrol Incident Commander Lt. Mark Arras is quoted as saying that

1 if people get a Trespass Warning, “They lose the ability to be part of the important legislative  
2 process.” Compl., ex. 2. Quite right—and that is why the Trespass Warnings are  
3 unconstitutional.

4 **D. Canfield’s Experiences Are Indicative of a Common Course of Conduct Affecting**  
5 **Similarly Situated Others.**

6 What Canfield has experienced is not unique. Instead, it is the result of an  
7 unconstitutional policy and practice of the Washington State Patrol, imposed on many others as  
8 well.

9 As he was given a Trespass Warning on November 28, 2011, Canfield saw other people  
10 receiving an identical Warning, with the same terms.

11 Further, Canfield knows that the Washington State Patrol has a policy and practice of  
12 giving Trespass Warnings in similar situations. In April 2011, a group of persons “camped  
13 out” in the Legislative Building as a political protest, and Canfield was present. During that  
14 period, he observed a number of persons receiving Trespass Warnings that were materially  
15 indistinguishable from the one he received on November 28, 2011. (*Id.* at ¶ 21.)

16 Indeed, Plaintiff has alleged that, on information and belief, officers of the Washington  
17 State Patrol have been employing materially indistinguishable Trespass Warnings on the  
18 Capitol grounds for the past seven or eight years. These Warnings bar persons from entering  
19 the Capitol grounds and outdoor public spaces and parks for any reason, no matter how  
20 Washington State Patrol officers believe such persons intend to demean themselves.

21 Further, the Washington State Patrol continues to have this policy and practice.

22 **III. ARGUMENT**

23 **A. Under Rule 65(b), Plaintiff Has Made Sufficient Efforts to Give Notice to the**  
24 **Adverse Parties.**

25 Under Federal Rule of Civil Procedure 65(b), a temporary restraining order (TRO) may  
26 be issued with or without notice to the adverse party. 11A Charles Alan Wright et al., *Federal*  
*Practice and Procedure* § 2951 (2d ed. 2011). The notice that Rule 65(b) contemplates may be

1 either “written or oral.” Fed. R. Civ. P. 65(b)(1). Thus, for the purposes of issuing a TRO,  
 2 “informal notice” is acceptable. *Id.* R. 65 advisory committee’s note. If notice is not possible,  
 3 a TRO may be issued if the movant’s attorney “certifies in writing any efforts to give notice  
 4 and the reasons why it should not be required.” *Id.* R. 65(b)(1)(B).

5 Here, immediately after filing the instant action on Sunday, December 4, 2011, counsel  
 6 for Plaintiff emailed a group of attorneys at the Washington State Attorney General’s office  
 7 who specialize in civil rights litigation. *See* Decl. of Harry Williams in Supp. of Mot. for  
 8 Temporary Restraining Order and Preliminary Injunction ¶ 2-3. In addition, Plaintiff will  
 9 expeditiously attempt to obtain personal service on each of the individual defendants. *Id.* ¶ 4.  
 10 Plaintiff has noted this *ex parte* motion for consideration on Monday, December 5, 2011,  
 11 according to Local Rule W.D. Wash. CR 7(d), and respectfully requests a hearing as soon as  
 12 possible on that date, but in order to give defense counsel an opportunity to respond, Plaintiff  
 13 would stipulate to a hearing on Tuesday, December 6, 2011.

14 **B. Plaintiff Has Satisfied the Legal Standard Governing Issuance of a Temporary**  
 15 **Restraining Order.**

16 The standard for issuing a TRO is the same as the standard for issuing a preliminary  
 17 injunction. *Zango, Inc. v. PC Tools Pty Ltd.*, 494 F. Supp. 2d 1189, 1194 (W.D. Wash. 2007)  
 18 (citing *Graham v. Teledyne-Continental Motors, Div. of Teledyne Indus., Inc.*, 805 F.2d 1386,  
 19 1388 (9th Cir.1986)). To secure either a TRO or a preliminary injunction, Canfield must show  
 20 four things: “that he is likely to succeed on the merits, that he is likely to suffer irreparable  
 21 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that  
 22 an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.  
 23 2009).<sup>3</sup>

24 \_\_\_\_\_  
 25 <sup>3</sup> It is well established that this Court can issue a classwide TRO without formal class certification. *See V.L. v.*  
 26 *Wagner*, 669 F. Supp. 2d 1106, 1114 n.6 (N.D. Cal. 2009) (recognizing authority to grant classwide preliminary  
 injunction in absence of class certification); *Wright v. City of Cincinnati*, 450 F. Supp. 2d 831, 841 (S.D. Ohio  
 2006) (making TRO applicable to all members of the proposed class); *Crue v. Aiken*, 137 F. Supp. 2d 1076 (C.D.  
 Ill. 2001) (issuing a classwide TRO against an unconstitutional prior restraint, even though proposed class had  
 not been certified). After all, as a practical matter, “[w]hether plaintiff proceeds as an individual or on a class-

1           **1. Plaintiff Will Likely Succeed on the Merits Because Prior Restraints are**  
 2           **Presumptively Invalid.**

3           Plaintiff will succeed on the merits because the Trespass Warnings are a prior restraint,  
 4 issued with neither process nor right to appeal. The Warnings prevent core political speech in a  
 5 public forum. No court ever has ever upheld such a brazen practice of preventing the exercise  
 6 of First Amendment rights.

7           The Trespass Warnings are a prior restraint because they give “public officials the  
 8 power to deny use of a forum in advance of actual expression.” *Long Beach Area Peace*  
 9 *Network v. City of Long Beach*, 574 F.3d 1011, 1023 (9th Cir. 2009) (quotation marks and  
 10 citation omitted), *cert. denied*, 130 S. Ct. 1569 (2010). Prior restraints “carry a heavy  
 11 presumption of invalidity,” and a prior restraint “need not actually result in suppression of  
 12 speech in order to be constitutionally invalid.” *Id.* (quotation marks and citation omitted).

13           For prior restraints to be valid, they “must contain narrow, objective, and definite  
 14 standards to guide the licensing authority and must require the official to provide an  
 15 explanation for his decision.” *Id.* at 1025 (quotation marks, citations, and alterations omitted);  
 16 *see also Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality v. City of Seattle*, 550 F.3d  
 17 788, 798 (9th Cir. 2008) (ordinance must have “narrowly drawn, reasonable and definite  
 18 standards that guide the hand of the administrator”). The Trespass Warnings challenged here  
 19 do not come close to meeting this requirement, for the simple reason that they contain no  
 20 standards at all—at either the “front” or the “back” end. There appear to be no stated standards  
 21 governing when such Trespass Warnings may be issued, and there are certainly no standards  
 22 governing when the recipients of the Warnings may return to the Capitol grounds within the  
 23 30-day or 1-year period of banishment—indeed it appears that they simply cannot return. The  
 24 Warnings, then, are an unrestrained and unqualified ban on Plaintiff and the Class’s use of the  
 25 Capitol grounds for expression, assembly, and petition.  
 26

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suit basis, the requested relief generally will benefit not only the claimant but all other persons subject to the practice or the rule under attack.” 7A Charles Alan Wright et al., *supra*, § 1771.



1 First Amendment protections are particularly strong when the speech or expressive  
 2 activity takes place in a traditional public forum. *Hague v. CIO*, 307 U.S. 496, 515-16, 519  
 3 (1939). In these forums, “[t]he government’s right to limit expressive activity . . . is sharply  
 4 circumscribed.” *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 791 (9th Cir. 2006)  
 5 (quotation marks and citation omitted). Because the Capitol Campus includes lawns, pathways,  
 6 the Capitol steps, and public parks such as Heritage Park and Sylvester Park, it is a public  
 7 forum in the most traditional and fundamental sense.

8 The government can certainly regulate the “time, place or manner” of expression in  
 9 traditional public forums, but the Trespass Warnings defy this kind of analysis because they are  
 10 a *total ban* on an entire medium of expression. As the Ninth Circuit has noted:

11 [T]he Supreme Court “ha[s] voiced particular concern with laws that foreclose  
 12 an entire medium of expression,” because “the danger they pose to the freedom  
 13 of speech is readily apparent—by eliminating a common means of speaking,  
 14 such measures can suppress too much speech.” A long line of Supreme Court  
 cases indicates that such laws are almost *never* reasonable “time, place, or  
 manner” restrictions.

15 *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1064 (9th Cir. 2010) (quoting *City of*  
 16 *Ladue v. Gilleo*, 512 U.S. 43, 55 (1994)); *see also Edenfield v. Fane*, 507 U.S. 761, 773 (1993)  
 17 (noting that it “is open to serious doubt” whether “a flat ban on commercial solicitation could  
 18 be regarded as a content-neutral time, place, or manner restriction on speech”). Thus, the  
 19 Trespass Warnings flunk the “time, place or manner” test.<sup>4</sup>

20 But even if the Trespass Warnings were a content-neutral regulation of the time, place  
 21 or manner of expression, they would be unconstitutional because they sweep far more broadly  
 22 than is necessary to achieve the state’s interests. *See Anderson*, 621 F.3d at 1064-65 (noting

23 \_\_\_\_\_  
 24 <sup>4</sup> “Informal measures, such as ‘the threat of invoking legal sanctions and other means of coercion, persuasion, and  
 25 intimidation,’ can violate the First Amendment also.” *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000)  
 26 (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)). Government officials here threaten to arrest,  
 and in many cases actually arrest, individuals for no reason other than that they are (1) attempting to exercise  
 their constitutional rights and (2) purportedly violating a prior order issued without process allegedly restraining  
 their ability to speak, publish, assemble, and petition. In threatening arrest and prosecution, Defendants violate  
 the First Amendment because their acts “would chill or silence a person of ordinary firmness from future First  
 Amendment activities.” *Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999).

1 that time-place-manner regulations must not be “substantially broader than necessary to  
2 achieve the government’s interest” (quotation marks and citation omitted)). The Trespass  
3 Warnings flatly prohibit their recipients from engaging in expressive activity in outdoor public  
4 forums, no matter how peacefully these persons would behave there. Nor do the Warnings  
5 leave open “ample alternative means” for communication—another requirement for valid time-  
6 place-manner regulations—since they utterly prohibit speakers from reaching their intended  
7 audience on the Capitol grounds. *See Bay Area Peace Navy v. United States*, 914 F.2d 1224,  
8 1229 (9th Cir 1990).

9 The Trespass Warnings, of course, also exclude their recipients from the Legislative  
10 Building. Communicating to elected representatives is a core speech activity and the  
11 Legislative Building and its environs is precisely where such activity *must* take place. “The  
12 maintenance of the opportunity for free political discussion to the end that government may be  
13 responsive to the will of the people and that changes may be obtained by lawful means, an  
14 opportunity essential to the security of the Republic, is a fundamental principle of our  
15 constitutional system.” *Edwards v. South Carolina*, 372 U.S. 229, 238 (1963). Thus, there is  
16 no forum where peaceful speech can deserve higher protection than in the forum where citizens  
17 communicate to their elected officials. The Trespass Warnings totally prevent this core public  
18 function, and “no conceivable governmental interest would justify such an absolute prohibition  
19 of speech,” assembly, and petition. *Bd. of Airport Com’rs of City of Los Angeles v. Jews for*  
20 *Jesus, Inc.*, 482 U.S. 569, 575 (1987).

21 Here, officers ban individuals without any pre-deprivation process. Nor is there any  
22 way to appeal the bans. There are no “definite standards” nor explanations—there are forms,  
23 filled out with unbridled discretion by state officials denying fundamental rights. This prior  
24 restraint cannot stand.

## 25 2. Plaintiff Is Suffering Irreparable Harm.

26 “The loss of First Amendment freedoms for even minimal periods of time,  
unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). “The

1 harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as  
 2 ‘timing is of the essence in politics’ and ‘[a] delay of even a day or two may be intolerable.’”  
 3 *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (quoting *Long Beach Area*  
 4 *Peace Network*, 522 F.3d at 1020), *cert. denied*, 130 S. Ct. 1706 (2010). For these reasons,  
 5 Plaintiff Canfield has suffered irreparable harm. Every day that he and the rest of the Class are  
 6 subject to Trespass Warnings, their speech will be chilled and they must fear arrest as the result  
 7 of a process-devoid infringement on their constitutional rights.

8 **3. The Balance of Equities and the Public Interest Both Strongly Favor**  
 9 **Plaintiff.**

10 The Washington State Patrol’s policy of issuing and enforcing Trespass Warnings  
 11 “infringes on the free speech rights not only of [Canfield], but also of anyone seeking to  
 12 express their views” on the Capitol grounds. *Klein*, 584 F.3d at 1208. “The balance of equities  
 13 and the public interest thus tip sharply in favor of enjoining” this unconstitutional policy. *Id.*  
 14 Further, as Plaintiff has shown above, the state cannot show that the policy “is narrowly  
 15 tailored to meet [its] interests”; “[a]ccordingly,” granting a temporary restraining order “will  
 16 not accrue harm to [the state] or the citizens,” and the balance of equities tips sharply in favor  
 17 of Plaintiff and the proposed class. *Higher Taste v. City of Tacoma*, 755 F. Supp. 2d 1130,  
 18 1138 (W.D. Wash. 2010). Finally, “[w]here a party establishes the likelihood of success on the  
 19 merits, the public interest will also be implicated in injunction actions involving First  
 20 Amendment challenges.” *Id.*; *see also Sammartano v. First Judicial Dist. Court*, 303 F.3d 959,  
 21 974 (9th Cir. 2002) (“Courts considering requests for preliminary injunctions have consistently  
 22 recognized the significant public interest in upholding First Amendment principles.”). A  
 23 temporary restraining order and a preliminary injunction against a blatantly unconstitutional  
 24 prior restraint are in the public interest.

25 **C. The Bond Requirement Should be Waived in this Constitutional Case.**

26 Good cause exists to waive the bond requirement of Federal Rule of Civil Procedure  
 65(c). First, the high probability of success on the merits favors exercising the court’s

1 discretion to dispense with such security. *People ex rel. Van de Kamp v. Tahoe Regional*  
2 *Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985). Second, it appears unlikely that  
3 defendants would incur any significant cost or damages as a result of a temporary restraining  
4 order or preliminary injunction. *U.S. v. State of Or.*, 675 F. Supp. 1249, 1253 (D. Or. 1987).  
5 Third, to require a bond would have a negative impact on Plaintiff's constitutional rights, as  
6 well as the constitutional rights of other members of the Class and the public affected by the  
7 policy. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996).

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that this Court ENJOIN  
10 Defendants from issuing or enforcing Trespass Warnings.

11 DATED this 4th day of December, 2011.

12 KELLER ROHRBACK L.L.P.

13 By s/ Harry Williams IV

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15 gobrist@kellerrohrback.com

16 Benjamin Gould, WSBA #44093

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18 Harry Williams IV, WSBA #41020

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20 KELLER ROHRBACK L.L.P.

21 1201 Third Avenue, Suite 3200

22 Seattle, WA 98101

23 Telephone: (206) 623-1900

24 *Attorneys for Plaintiff*

# Exhibit 1



# Trespass Warning

# 26

I, MARK TAYLOR (name) 11/11/71 (date of birth), do hereby acknowledge that I have been notified by SERGT SASS (name) of the Washington State Patrol

that from this day forward, I am prohibited from entering the premise located at CAPITAL CAMPS, Olympia, Washington, for:  30 days  1 year.

I acknowledge that if I do so, it could result in my arrest for Criminal Trespass in accordance with RCW 9A.52.070 and 9A.52.080.

I have been advised and do hereby acknowledge the above on this 28<sup>th</sup> day of NOVEMBER 20 11.

Signed: X REFUSED

Trooper: FRANK DAVIS

FORM 3110

The Honorable \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
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AT TACOMA

MARK F. CANFIELD, on behalf of all persons )  
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Defendants. )

No. 3:11-cv-05994

[PROPOSED] ORDER GRANTING  
TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION

CLASS ACTION

This matter having come before the court on \_\_\_\_\_, 2011, on Plaintiff

Mark F. Canfield's Motion for an Ex Parte Temporary Restraining Order and Preliminary  
Injunction and the Court having reviewed the documents and records filed herein in supporting  
the motion, including, but not limited to:

- 1. Complaint and supporting exhibits;

- 1           2.     Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction;  
2 and  
3           3.     Declarations in Support thereof.

4     The Court finds that:

5           A.     Defendants received adequate notice by personal service and that  
6 Plaintiff's counsel made additional efforts to give notice by service of the complaint by  
7 email;

8           B.     Defendants appeared [in person] [by telephone] for a hearing on this  
9 matter;

10          C.     Plaintiff's declaration provides an adequate and verified foundation for  
11 this Order;

12          D.     Requiring a bond would have a negative impact on Plaintiff's  
13 constitutional rights, as well as the constitutional rights of other members of the public  
14 affected by the policy.

15     4.     Based on these findings, the Court makes the following conclusions of law:

16           A.     Plaintiff has standing;

17           B.     This Court has jurisdiction over Plaintiff's claims;

18           C.     Plaintiff has shown that he is likely to succeed on the merits;

19           D.     Plaintiff has shown that he is suffering, and will continue to suffer,  
20 irreparable harm if he is not granted preliminary relief;

21           E.     The balance of equities tips in Plaintiff's favor; and

22           F.     An injunction is in the public interest.

23     The Court waives the bond requirement of Federal Rule of Civil Procedure 65(c),  
24 because the high probability of success on the merits favors exercising the court's discretion to  
25 dispense with such security, *People ex rel. Van de Kamp v. Tahoe Regional Planning Agency*,  
26 766 F.2d 1319, 1326 (9th Cir. 1985); it appears unlikely that defendants would incur any



1 significant cost or damages as a result of the preliminary injunction, *U.S. v. State of Or.*, 675 F.  
2 Supp. 1249, 1253 (D. Or. 1987); and to require a bond would have a negative impact on  
3 Plaintiff's constitutional rights, as well as the constitutional rights of other members of the  
4 Class and the public affected by the policy. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F.  
5 Supp. 719, 738 (C.D. Cal. 1996).

6 IT IS NOW THEREFORE, ORDERED, ADJUDGED, AND DECREED that  
7 Defendants John R. Batiste, Gregory E. Miller, and Jeffrey Sass, in their official capacities, are  
8 restrained and directed as follows:

9 1. Defendants shall not personally, or allow others in their control, to issue  
10 Trespass Warnings banning individuals from the Capitol Campus and other government  
11 property.

12 2. Defendants shall not personally, or allow others in their control, to arrest  
13 individuals based solely on the violation of a Trespass Warning.

14 3. This Temporary Restraining Order shall remain in effect for 10 days  
15 or This Preliminary Injunction shall remain in effect for the pendency of this litigation.

16 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

17  
18  
19 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

20 Presented by:

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