

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RODOLFO SANCHEZ and	§	
KRISTOPHER SLEEMAN,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 1:11-cv-993-LY
	§	
ART ACEVEDO, MICHAEL	§	
MCDONALD, MARC OTT, LEE	§	
LEFFINGWELL, MIKE MARTINEZ,	§	
KATHY TOVO, LAURA MORRISON,	§	
SHERYL COLE, BILL SPELMAN,	§	
and CHRIS RILEY,	§	
<i>all in their official capacities,</i>	§	
	§	
and	§	
	§	
the CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

FIRST AMENDED COMPLAINT

Plaintiffs Rodolfo Sanchez and Kristopher Sleeman file this suit pursuant to 42 U.S.C. §1983 against the City of Austin, Texas and several of its officials to force the Defendants to cease their unlawful prior restraint of Plaintiffs’ protected speech as participants in the Occupy Austin protests at Austin’s City Hall and prevent prospective application of the city’s policy respecting issuance of “Criminal Trespass Notices” excluding a recipient from any or all city property for a set duration. By policy and practice, the Defendants have unlawfully restricted, and will continue to restrict, the First Amendment and due process rights of

Plaintiffs, other Occupy Austin protesters, and all citizens of Austin who may desire to use city-owned property as a forum for free expression or to petition their government for redress of grievances. These constitutional defects give rise to both facial and as-applied constitutional challenges to the policies, their implementation by Defendants, and their application to Plaintiffs and others.

PARTIES

1.01 Plaintiff Rodolfo “Rudy” Sanchez is a resident of Westlake Hills, Texas who regularly attended and participated in the Occupy Austin protests on the City Hall plaza until he was banned from returning under threat of arrest by unidentified City officials through their issuance to Mr. Sanchez of a “Criminal Trespass Notice.” Mr. Sanchez has resumed and intends to continue exercising his First Amendment rights of free expression, assembly, and petitioning his government for redress of grievances at the Occupy Austin protest site on City Hall plaza, but although his the exclusionary effect of his ban has been terminated, he fears he may be subjected to another ban for expressing his political views or out of retaliation.

1.02 Plaintiff Kristopher “Kris” Sleeman is a resident of Austin, Texas who regularly attended and participated in the Occupy Austin protests on the City Hall plaza until he was banned from returning under threat of arrest by

unidentified City officials through their issuance to Mr. Sleeman of a “Criminal Trespass Notice.” Mr. Sleeman has resumed and intends to continue exercising his First Amendment rights of free expression, assembly, and petitioning his government for redress of grievances at the Occupy Austin protest site on City Hall plaza, but although his the exclusionary effect of his ban has been terminated, he fears he may be subjected to another ban for expressing his political views or out of retaliation.

- 1.03 Defendant Leffingwell currently serves, and during the time relevant to this action has served, as the Mayor of the City of Austin.
- 1.04 Defendant Ott currently serves, and during the time relevant to this action has served, as the City Manager of the City of Austin.
- 1.05 Defendant McDonald currently serves, and during the time relevant to this action has served, as an Assistant City Manager of the City of Austin with responsibility for public safety services, including the Austin Police Department (APD).
- 1.06 Defendant Acevedo currently serves, and during the time relevant to this action has served, as Chief of the Austin Police Department.

1.07 Defendants Martinez, Tovo, Morrison, Cole, Spelman, and Riley currently serve, and during the time relevant to this action have served, as members of the City Council of the City of Austin.

1.08 Defendant City of Austin is a municipal corporation within the State of Texas.

JURISDICTION

2.01 This Court has jurisdiction over this dispute pursuant to 28 U.S.C. §1331.

VENUE

3.01 Venue is proper before this Court because the acts of Defendants here complained of all took place in Austin, Texas, and Austin, Texas is the primary place where Defendants' business is conducted.

STATEMENT OF FACTS

A. Austin City Hall

4.01 Austin's City Hall is "a unique landmark gateway to Austin City government"¹ that was "designed to promote public participation and interaction with local government."² The City Hall building and plaza, which opened in 2004, "serve as a gathering place for public discourse and community collaboration."³ As the city's website acknowledges, the "City Hall building belongs to our citizenry and the entire design is intended to

¹ City of Austin, *Austin City Hall—About City Hall*, <http://www.ci.austin.tx.us/cityhall/about.htm>.

² City of Austin, *Austin City Hall—Arts & Culture*, <http://www.ci.austin.tx.us/cityhall/arts.htm>.

³ City of Austin, *Austin City Hall—About City Hall*, <http://www.ci.austin.tx.us/cityhall/about.htm>.

embrace the spirit and identity of Austin and reinforce the mutual respect between the [City] Council and the citizens of Austin.”⁴

4.02 Fostering engagement of the public with Austin city government at City Hall was thus a key design concept of the City Hall redevelopment project from its very inception. Indeed, among the goals agreed and adopted by the Austin community, City Council, and city staff to guide the redevelopment project were “[p]romot[ing] interaction, public participation and dialogue” and, specifically, “[d]esign[ing] a plaza that attracts people and promotes activities throughout the day and evening.”⁵

4.03 The City Hall plaza that resulted from these efforts “is a focal point for everyone” both in city government and in the Austin community, and the plaza serves “as a gathering place for all of its citizens and is the public’s ‘living room’ on a grand scale.”⁶ By design, the “outdoor spaces on the plaza are ideal for free expression and can accommodate large gatherings without interrupting the process inside.”⁷ But the interior spaces of City Hall are very deliberately not isolated from the plaza—both the Board and Commission Room and the Council Chambers “visually extend into the plaza with large windows as a reminder to those inside and outside of the balance of

⁴ City of Austin, *Austin City Hall—Building Concept*, <http://www.ci.austin.tx.us/cityhall/concept.htm>.

⁵ *Id.*

⁶ City of Austin, *Austin City Hall—Building Features—Plaza*, <http://www.ci.austin.tx.us/cityhall/plaza.htm>.

⁷ City of Austin, *Austin City Hall—Building Concept*, <http://www.ci.austin.tx.us/cityhall/concept.htm>.

government and citizens coming together for the common pursuit of exchanging ideas and shaping policy.”⁸ The plaza “is accessible 365 days a year,”⁹ and the city’s policy regarding public use of the plaza and other areas of City Hall expressly designates the plaza, including the mezzanine and amphitheater areas, as a “free speech venue.”¹⁰

B. The Occupy Austin Protest And Plaintiffs’ Participation

4.04 Since October 6, 2011, the City Hall plaza has been the main site of the largest continuous political protest in Austin in a generation—Occupy Austin. Occupy Austin is a protest movement focused on democracy, economic security, corporate responsibility, and financial fairness and comprised of local citizens “dedicated to non-violently reclaiming control of our governments from the financial interests that have corrupted the m.”¹¹ The mission of Occupy Austin and its participants “is to assert our rightful place within the political process, and take the reins of power away from profit-driven interests.”¹²

4.05 The hallmark of the Occupy movement, both in Austin and elsewhere, is continuous occupation of high-visibility locales associated with democracy

⁸ *Id.*

⁹ City of Austin, *Austin City Hall—Building Features—Plaza*, <http://www.ci.austin.tx.us/cityhall/plaza.htm>.

¹⁰ City of Austin, *Austin City Hall—Guidelines for Non-City Use* at 2 (May 12, 2009), available at http://www.ci.austin.tx.us/cityhall/downloads/cityhalluse_05-12-2009.pdf.

¹¹ Occupy Austin, *Occupy Austin Wiki—Solidarity Statement*, http://occupyaustin.org/wiki/doku.php?id=groups:mission_and_values:start.

¹² Occupy Austin, *Guide to Thrive* at 3 (Oct. 2011), available at http://occupyaustin.org/wp-content/uploads/2011/10/Guide_to_Thrive.pdf.

or corporate and financial influence as protest sites. The protesters' act of occupying these sites serves as a means of communicating their message that popular control over the means of democratic governance must be renewed.

4.06 Plaintiff Sleeman began his participation in the Occupy Austin protest by attending organizational and planning meetings held in Republic Square Park a week before the occupation of Austin City Hall plaza. Mr. Sleeman, along with his wife and four-year-old son, has attended the protest two to three times per week since then, regularly spending nights on the plaza. The message that Mr. Sleeman has sought to convey through his participation in the Occupy Austin movement is that America has sacrificed its middle class and its industrial heritage in favor of a corrupt and amoral system of crony capitalism.

4.07 Plaintiff Sanchez has likewise participated in the Occupy Austin protest at City Hall since it began on October 6, 2011. To attend the protest, he has taken multiple days off of work. The message Mr. Sanchez has attempted to convey through participation in the Occupy Austin protest is his belief, grounded in his faith as a Christian, that recent developments in our country and our economy—rewarding Wall Street greed with TARP bailouts, escalating income and healthcare inequality, and the predominance of

corporate money in political campaigns—are immoral and antithetical to democratic self-governance.

C. Defendants' Banning Of Plaintiffs From City Hall

4.08 As the occupation of City Hall plaza continued through October 2011, the relationship between the city and the protesters became increasingly fractious. City staff imposed policies on the protesters' use of the plaza—thrice-weekly power washings that require relocation of every portion of the Occupy base camp, micromanagement of which portions of the plaza could be used for what activities, and others—that appeared to the protesters to have been deliberately designed to make the expressive conduct of occupation intolerable, in direct contravention of the city's stated policy of encouraging the use of the plaza for free speech and assembly purposes.

4.09 On Friday, October 28, 2011, the Defendants issued a memo imposing new restrictions on the Occupy protesters' use of City Hall plaza. Among these were prohibitions against sleeping or setting up sleeping accommodations on the mezzanine area of the plaza, exhibiting unattended protest signs, and operating the communal food tables organized and maintained by the Occupy protesters between the hours of 10:00 p.m. and 6:00 a.m. The memo was posted on a City Hall door and distributed to some protesters on the plaza on Saturday, October 29.

- 4.10 Less than 24 hours later, at approximately 12:30 a.m. on Sunday, October 30, Defendants moved to enforce the new prohibition on nighttime food service, deploying a large number of Austin Police Department officers to take down the food tables and seize any food supplies that had not been put away in compliance with the new policy. In an act of nonviolent civil disobedience, some of the Occupy protesters formed a human chain around the tables and were arrested.
- 4.11 While the chain formed, Mr. Sanchez was videotaping events from behind the food tables. As the first arrests were occurring, he decided he did not want to be arrested and tried to move away from the tables. As he was attempting to do so, Mr. Sanchez was confronted by an APD officer who asked Mr. Sanchez if he wanted to be arrested and then, without giving Mr. Sanchez an effective opportunity to respond or leave the immediate area, arrested him. Mr. Sanchez did not resist.
- 4.12 Seventeen other protesters were arrested at the same time. Subsequently, an additional twenty protesters were arrested for refusing to vacate the plaza for an early-morning pressure washing. In total, thirty-eight Occupy protesters, including Mr. Sanchez, were arrested that night and charged with criminal trespass. Speaking to the press about the arrests later, defendant Acevedo acknowledged that “the vast majority of the Occupy Austin members,

including those who were arrested,” had been “extremely respectful” and described himself as being “very proud of the fact that folks that chose to challenge the rules did so in a responsible manner without resorting to violence.”¹³

4.13 While APD officers were putting Mr. Sanchez into a police van after his arrest, he was informed by an unidentified city official that he was banned from returning to any portion of City Hall, including the plaza, for a period of two years. Mr. Sanchez was transported and booked into the Travis County jail, was charged with one count of criminal trespass, and was released approximately 16 hours later, after posting bond. While he was in jail, he was again told by an unidentified Travis County jailer that he was not allowed to return to City Hall for two years and that, if he did, he would again be arrested for criminal trespass. Mr. Sanchez subsequently received a letter from the city indicating that the duration of his ban was one year and advising him of his right to administrative review of the ban.

4.14 On information and belief, all of the 38 Occupy protesters arrested for criminal trespass on the morning of October 30 were informed that they had been banned from returning to City Hall for a period of at least one year, and

¹³ See Nick Hadjigeorge, *Occupy Austin Demonstrators Arrested After Law Confusion*, DAILY TEXAN (Oct. 30, 2011), available at <http://www.dailytexanonline.com/news/2011/10/31/occupy-austin-demonstrators-arrested-after-law-confusion> (quoting defendant Acevedo).

numerous others among the arrestees were told, like Mr. Sanchez, that the duration of the ban was two years.

4.15 Mr. Sleeman was also present on the City Hall plaza during the early morning hours of October 30, videotaping the protest and the conduct of APD officers taking down the protesters' food tables and making arrests. Mr. Sleeman, who was present at the protest with his son that night, did not obstruct any officers or otherwise refuse to comply with the city's policies respecting use of the plaza, and he was not among the 38 protesters arrested. Later that morning, Mr. Sleeman gave an interview to a local television news crew about the events that had transpired overnight. As part of the interview, Mr. Sleeman gave his name and a description of what he had witnessed.

4.16 That evening, Mr. Sleeman spoke at the Occupy Austin general meeting held on the plaza, expressing his views that the city should permit the protesters to move their base camp to Zilker Park and that more protesters should bring wives and children to protest. At the same time as Mr. Sleeman was addressing the general assembly, APD officers began surrounding the protesters. Fearing a clash between the protesters and APD, Mr. Sleeman set about looking for his son to ensure his safety.

4.17 While he was doing so, a police officer shouted Mr. Sleeman's name and told him to stop. Mr. Sleeman was approached by numerous police officers and placed under arrest. The arrest was based on an outstanding warrant stemming from his failure to pay a traffic ticket received for running a stop sign on his bicycle several years ago. Neither prior to nor at the time of his arrest was Mr. Sleeman given any notice that his entry or presence on the City Hall plaza was forbidden or that he was required to depart. Mr. Sleeman did not resist arrest.

4.18 Mr. Sleeman was transported to the Travis County jail, booked on the open warrant, and additionally charged with criminal trespass and an ordinance violation. While he was being transported, he was informed by an unidentified city official that he was banned from returning to any portion of City Hall, including the plaza, for a period of one year. After being held in jail for approximately 22 hours, Mr. Sleeman was told that he had served his time on the warrant. The other charges against him were dropped, and Mr. Sleeman was released without bond.

4.19 Following their respective arrests, Mr. Sleeman's and Mr. Sanchez's inability to return to City Hall plaza and the main Occupy Austin protest site severely restricted their ability to convey their political message to Austin city officials and entirely precluded their participation in the expressive

conduct—occupation of public spaces—that lies at the core of the Occupy movement. Both Mr. Sanchez and Mr. Sleeman desired and intended to continue their protest activities at City Hall plaza but for the ban on their presence. In addition, both Mr. Sleeman and Mr. Sanchez desired to return to City Hall during the periods in which their respective bans were in effect for purposes unrelated to Occupy Austin—for example, to attend City Council meetings and other civic events, meet with their elected representatives, remonstrate, and engage in the many other government–citizen interactions that take place at City Hall—but they could not do so under the terms of their criminal trespass notices without risking arrest.

4.20 On the morning of October 31, defendants Acevedo and McDonald held a meeting at City Hall with a number of Occupy Austin protesters to discuss the events of the previous day. One day later, Defendants rescinded the policy barring food service between the hours of 10:00 p.m. and 6:00 a.m. City of Austin, *Response to Requests from Occupy Austin 3* (Nov. 1, 2011), available at [http://alt.coxnewsweb.com/shared-blogs/austin/cityhall/upload/2011/11/city_to_occupy_austin_proteste/Notice%20of%20City%20Response%20to%20Occupy%20Austin%20110111%20\(Final\).pdf](http://alt.coxnewsweb.com/shared-blogs/austin/cityhall/upload/2011/11/city_to_occupy_austin_proteste/Notice%20of%20City%20Response%20to%20Occupy%20Austin%20110111%20(Final).pdf) (Ex. A).

However, Defendants rejected a request by protester representatives that individuals who had previously received notices be allowed to return to City

Hall plaza to participate in Occupy Austin, stating that a forthcoming procedure would permit recipients of notices to request an administrative review by city officials. *Id.* at 1.

4.21 Since October 30, Defendants have enforced and threatened to enforce the criminal trespass notices issued to Occupy Austin protesters by arresting notice recipients who attempt to enter City Hall property on charges of criminal trespass. The evening after his release from jail, Mr. Sleeman, while meeting with several Occupy Austin protesters in Margaret Hoffman Oak Park across Cesar Chavez Street from City Hall, was told by an unidentified APD officer that officers had been told to look out for Mr. Sleeman and to arrest him if he attempted to return to City Hall plaza. On information and belief, at least two other Occupy Austin protesters who had received notices have subsequently been arrested and charged with criminal trespass when they tried to return to City Hall plaza and resume protesting at the main Occupy Austin site.

D. Austin's Policy Respecting Criminal Trespass Notices

4.22 On information and belief, prior to November 1, 2011, the city had no written policy respecting issuance by city personnel of warnings or notice relating to potential criminal trespass charges, the area of exclusion to be

effected by issuance of such warnings or notice, or the duration of exclusion to be effected by their issuance.

4.23 On November 1, 2011, defendant Ott, in his official capacity as City Manager, signed and caused to be promulgated a city administrative bulletin titled *Criminal Trespass Notices On City Property*. City of Austin, Administrative Bulletin 11-04, at 1 (Nov. 1, 2011), available at http://www.ci.austin.tx.us/cityclerk/downloads/Administrative_Bulletin_20111102.pdf (Ex. B). This bulletin “establishes rules and procedures for issuing and reviewing a criminal trespass notice resulting from activities that occur in a City-owned or occupied building, or on public lands owned by the City.” *Id.* A criminal trespass notice is a verbal or written statement that an individual must depart or may not enter city property, backed up by a threat of arrest on charges of criminal trespass—effectively, a ban from some area of public property for a set amount time. *See id.* at 2.

4.24 The policy is promulgated pursuant to the City Manager’s authority, under the City Charter, “to control and maintain the City’s public buildings and lands” and “to manage and control access by the public to City Property.” *Id.* at 1, 2. The official interests purportedly served by this policy are the city’s duties (1) “to be a responsible steward of the public buildings and lands under its ownership or control,” (2) “to maintain these public buildings and

lands in a manner that promotes public safety and health,” and (3) “to provide City-owned facilities where the City and the public can conduct business and other approved activities free from unlawful and disruptive interference.” *Id.* at 1.

4.25 The policy defines a “Criminal Trespass Notice” as an “oral or written communication to a person that entering by that person onto City Property is forbidden; or [that] the person must immediately depart from City Property.” *Id.* at 2 (capitalization altered). The “City Property” to which such a notice applies includes “the City Hall building and surrounding property; any other City-owned building or portion of a non-City owned building over which the City has control; City park lands or other recreational areas; and all other City-owned lands,” excepting only such buildings or areas “exempted from the scope of this Administrative Bulletin in a written document signed by the City Manager.” *Id.* On information and belief, no such exemptions have been made.

4.26 The policy envisions that criminal trespass notices will be issued only by “Authorized Employees,” a category that includes “the City Manager and any other employee of the City to whom authority to issue a Criminal Trespass Notice has been delegated.” *Id.* The bulletin includes a non-exclusive delegation of authority to issue criminal trespass notices to:

- all assistant city managers;
- the City Manager's chief of staff;
- all department directors, but limited to buildings and lands within the control or area of responsibility of their respective departments;
- other management personnel within a City Department [pursuant to an express written delegation of authority by the Department Director];
- building security employees, as designated by the appropriate Department Director in [] writing . . . ; and
- park rangers, but limited to conduct occurring on City park property.

Id. (capitalization altered). In addition, the City Manager is empowered to make additional delegations of authority "to any other City employee." *Id.*

4.27 Under the policy, an authorized employee "may issue a Criminal Trespass Notice to a person for conduct occurring on City Property that is unreasonably disruptive or harmful to City Property, to the conduct of City business, or to the conduct of approved non-City activities occurring on City Property, including but not limited to conduct that violates the Austin City Code." *Id.* at 3. No further guidelines are provided to channel the discretion of authorized employees in determining whether conduct warrants issuance of a notice.

4.28 A notice "may be verbal or written" and is supposed to include "a statement of the reason(s) the person is being notified not to enter an area or to depart from an area," a "description of the area from which the person is excluded," notification of the duration of the exclusion, and information describing the

administrative review process for such notices. *Id.* at 3-4. The statement of reasons “need not be detailed,” but it “should”—though not must—“relate to the grounds . . . upon which the notice is issued.” *Id.* at 4. The description of the area of exclusion must be sufficient to allow “a reasonable person [to] understand the specific area to which the person may not return.” *Id.* The policy provides no guidelines whatsoever to channel the discretion of authorized employees in determining whether to exclude an individual from all “City Property” or only a portion thereof and, if the latter, from what portion.

- 4.29 The policy provides that a criminal trespass notice will be issued “for a time period that is based on the seriousness of the conduct” on which the notice is based. *Id.* The factors to be considered include whether the conduct at issue “involves intentional damage to City Property,” “involves intentional injury or offensive contact with any person,” or “was intentionally disruptive to City business or an authorized non-City event” and whether “the person has previously engaged in similar conduct.” *Id.* Based on those factors, the policy provides guidelines “that the Authorized Employee may use to determine the appropriate duration of a Criminal Trespass Notice.” *Id.* The suggested duration guidelines provided are as follows:

<i>Description of Conduct Suggested</i>	<i>Duration of Exclusion</i>
No harm to persons or property, some disruption to City business or other event, and no similar past conduct	0–30 days
Some harm to persons or property, no disruption of City business or other event, and no similar past conduct	30–60 days
Some harm to persons or property, or some disruption of City business or other event, and history of similar past conduct	30–120 days
Significant harm to persons or property, or significant disruption of City business or other event, and no similar past conduct	90–180 days
Significant harm to persons or property, or significant disruption of City business or other event, and history of similar past conduct	90 days–1 year
Significant harm involving serious bodily injury or the threat of serious bodily injury to a person or to property, and threat of similar future conduct	1 year–permanent

Id. The policy provides no further guidelines to channel the discretion of authorized employees in determining an appropriate duration within the specified guideline ranges or in determining in which situations not following the duration guidelines would be appropriate.

- 4.30 Under normal circumstances, a criminal trespass notice may be issued only after an individual has received prior warning “that their conduct is in violation of law or a City policy” and been given “a reasonable opportunity to cease the violation.” *Id.* at 3. If the individual “promptly ceases the

conduct at issue,” the policy dictates that no criminal trespass notice should be issued. *Id.* However, the requirement of prior warning and opportunity to cease may be dispensed with under the policy if the individual’s conduct is both unreasonably disruptive or harmful *and* is either an offense under Texas law, has caused “injury to any person or damage to any property, ” or “threatens to cause an imminent breach of the peace.” *Id.*

4.31 The policy further provides for administrative review of criminal trespass notices by means of an informal hearing before the director of the relevant city department, with an appeal to the City Manager. *Id.* at 4-5. The issues for decision in the administrative review are whether the notice was issued for an appropriate reason and whether the area and duration of the notice are appropriate under the circumstances. *Id.* at 5. A request for administrative review does not stay or suspend the effect of the notice. *Id.* at 4. The policy provides that the procedures for administrative review “will be available to any person who has received a Criminal Trespass Notice . . . during the ninety days prior to the effective date” of the administrative bulletin promulgating the policy. *Id.* at 5.

E. Subsequent Developments

4.32 Before filing this suit, both Mr. Sleeman and Mr. Sanchez invoked their right to administrative review of their respective bans. At the time the suit

was filed, neither Mr. Sleeman nor Mr. Sanchez had been contacted by any city official regarding their invocation of that right or the scheduling of any administrative review proceeding.

4.33 In response to the filing of this suit and Plaintiffs' request for a temporary restraining order enjoining enforcement of their respective bans, Defendants agreed, as a means of avoiding the need for a hearing on the request for immediate, temporary injunctive relief, to request that the city official responsible for the administrative review process, Mr. Eric Stockton, hold expedited hearings on Plaintiffs' prior requests for review and provide an immediate review of the documentary record with respect to each of them. Dkt. No. 6. Mr. Stockton undertook that immediate review on November 22, 2011.

4.34 As a result of that immediate review by Mr. Stockton, Defendants agreed that, under the post hoc guidance provided by City Administrative Bulletin 11-04 with respect to criminal trespass notices issued prior to November 1, 2011, the notices issued to Mr. Sleeman and Mr. Sanchez warranted modification. *Id.* Both notices were accordingly modified so that the period during which each plaintiff was barred from entering onto City Hall property expired on Monday, November 21, 2011, the date this suit and Plaintiffs' request for temporary injunctive relief were filed. *Id.* Defendants provided

Plaintiffs, through counsel, copies of Mr. Stockton's written decision on the documentary review and advised Plaintiffs, through counsel, that expedited hearings on their review requests were scheduled for the afternoon of Wednesday, November 23. In addition, counsel for Defendants represented that, at least as of the afternoon of November 23, all necessary steps to inform city officials responsible for enforcing bans from City Hall about the modifications to Mr. Sleeman's and Mr. Sanchez's bans had been taken.

4.35 The administrative proceedings for review of Plaintiffs' respective bans scheduled for November 23, 2011 were cancelled without any notice to Plaintiffs or their counsel. Mr. Sleeman was accordingly deprived of the opportunity, which he had intended to exercise, to seek to have his ban rescinded entirely as being wholly inappropriate under the terms of the city's policy on issuing bans.

4.36 On November 26, 2011, Mr. Sleeman tried to return to City Hall plaza to engage in protected expressive political activity as part of the Occupy Austin protest. Mr. Sleeman was told by an unidentified city official that his ban from City Hall property had not been lifted and remained in effect. When Mr. Sleeman informed the city official about the review decision issued by Mr. Stockton, the official said that only one ban had been lifted and demanded that Mr. Sleeman produce the paperwork to prove his ban had

been modified. Mr. Sleeman was unable to produce a copy of the review decision at that time, and Mr. Sleeman was escorted from City Hall property by city officials and again told that, if he returned to City Hall, he would be arrested for criminal trespass.

CAUSES OF ACTION

A. Count I – Violation of First Amendment Rights (42 U.S.C. §1983)

- 5.01 Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants. Under color of state law and through a municipal policy or custom, Defendants have deprived and continue to deprive Plaintiffs of their rights to freedom of expression, including through expressive conduct, to peaceably assemble, and to freely petition for redress of grievances under the First Amendment.
- 5.02 The bans issued to protesters, including Plaintiffs, and the city's policy of banning individuals from City Hall impose a prior restraint on the exercise of each of these rights, and the application and threatened application of the city's policy to Plaintiffs and other individuals exercising such rights on the City Hall plaza, a traditional public forum, is not narrowly tailored to serve any significant governmental interest and fails to leave open ample alternative channels of communicating Plaintiffs' messages.

5.03 Moreover, Defendants' invocation of the city's policy to enforce a ban of Plaintiffs and other individuals participating in the Occupy Austin protest from City Hall demonstrates that the policy is not content-neutral. Rather, in application, the policy permits and encourages official discrimination among speakers based on the content of their speech and does so without being narrowly tailored to advance a compelling governmental interest. Further, to the extent that Defendants assert that the policy is in fact applied only to instances of particular types of conduct not facially enumerated in the policy, such assertion is merely pretext for content discrimination against Plaintiffs and the Occupy Austin protest.

5.04 Defendants' exclusion of Mr. Sleeman from City Hall property on November 26—even after his ban was modified to expire five days beforehand—constitutes an separate and additional infringement on Mr. Sleeman's First Amendment right to engage in protected political speech activities in the traditional public forum of City Hall plaza. Defendants' baseless exclusion of Mr. Sleeman was not content-neutral and fails every aspect of the strict scrutiny to which it is subject. Alternatively, even if this exclusion were content-neutral, its restriction on Mr. Sleeman's speech is not narrowly tailored to advance any substantial government interest and

fails to leave open ample alternative channels through which Mr. Sleeman could convey his intended political message.

5.05 Additionally, Defendants' policy respecting issuance of "Criminal Trespass Notices" at City Hall is unconstitutionally overbroad and vague, delegating to a wide range of city employees effectively unrestrained discretionary authority to ban any individual from any or all city property for substantial periods, even permanently, merely because that individual's conduct is subjectively viewed by a city employee as "unreasonably disruptive or harmful." Ex. B at 3. As Plaintiffs' experiences show, the city's criminal trespass notice policy sweeps within it an unreasonably broad range of protected First Amendment activity that, despite enjoying heightened protection under federal law, could nonetheless be subjectively viewed as "unreasonably disruptive or harmful" by city employees lacking any further guidance on implementation of the policy. Further, the threat of being banned from City Hall imposes a significant chilling effect on any individual who wishes to exercise his First Amendment rights of free expression and assembly but reasonably fears significant interference with his ability to access and interface with city government should he run afoul of the vague prohibitions of the city's policy, as interpreted by city employees delegated an immense degree of discretion. The unconstitutional overbreadth and

vagueness of the city's policy, coupled with its chilling effect on First Amendment rights, renders the policy facially unconstitutional and invalid in all applications.

B. Count II – Official Retaliation in Violation of First Amendment Rights (42 U.S.C. §1983)

5.06 Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants. Defendants' actions to ban Plaintiffs and other individuals participating in the Occupy Austin protest from City Hall constitute unlawful official retaliation against those individuals for their exercise of their First Amendment rights to free expression, peaceable assembly, and petitioning for the redress of grievances. Those retaliatory actions include, but are not limited to: (1) issuing criminal trespass notices to Occupy Austin protesters arrested at City Hall in contravention of the unwritten policy respecting such notices in force prior to November 1, 2011; (2) imposing and threatening enforcement, through criminal trespass notices, of blanket one- and two-year bans on Occupy Austin protesters entering onto City Hall property in contravention of the durational guidelines provided under the city's policy respecting issuance of such notices; and (3) applying its policy respecting issuance of criminal trespass notices only to Occupy Austin protesters at City Hall.

C. Count III – Violation of Due Process (42 U.S.C. §1983)

- 5.07 Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants. Under color of state law and through a municipal policy or custom, Defendants have deprived and continue to deprive Plaintiffs of their right to due process of law under the Fourteenth Amendment.
- 5.08 Plaintiffs possess a fundamental liberty interest, protected by the Due Process Clause, in entering and remaining in City Hall and on its plaza for the purposes of expressing protected speech or engaging in any of the myriad governmental-individual interactions that regularly take place at City Hall.
- 5.09 Through implementation of the policy permitting issuance of bans, and through enforcement of those bans to prevent Plaintiffs from returning to City Hall, Defendants intentionally deprived Plaintiffs of that fundamental liberty interest without providing any adequate procedural remedy.
- 5.10 Defendants' exclusion of Mr. Sleeman from City Hall property on November 26—even after his ban was modified to expire five days beforehand—constitutes an separate and additional infringement on Mr. Sleeman's right to due process of law. Defendants' arbitrary and baseless exclusion of Mr. Sleeman was an intentional deprivation of his fundamental

liberty interest in exercising his First Amendment rights without any adequate procedural remedy.

D. Count IV – Declaratory Relief

5.11 Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants. Defendants have deprived Plaintiffs of their federal constitutional rights to freedom of expression and due process of law, to peaceably assemble, and to petition their government for redress of grievances, causing irreparable harm to Plaintiffs. Through continued enforcement of the city's policy respecting issuance of "Criminal Trespass Notices," Defendants threaten further violations of those same rights. Plaintiffs are thus entitled to a declaration pursuant to 28 U.S.C. §2201 that their rights arising under the Constitution have been violated by the actions of the Defendants and that the city's policy is facially unconstitutional and as applied to the activities of Plaintiffs.

E. Count V – Injunctive Relief

5.12 Plaintiffs reallege the material facts alleged in the preceding paragraphs against Defendants. Plaintiffs continue to be deprived of their federal constitutional rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment, causing them irreparable harm and threatening additional, immediately impending irreparable injuries.

Defendants continue to maintain their policy of preventing Plaintiffs and other participants in the Occupy Austin protest from returning to City Hall through enforcement and issuance of “Criminal Trespass Notices” in violation of 42 U.S.C. §1983. Plaintiffs are thus entitled to an injunction preventing Defendants and their agents, employees, and any other persons or entities acting on their behalf, from further enforcement of (1) the “Criminal Trespass Notices” issued to them and other Occupy Austin protesters at City Hall and (2) the city policy respecting issuance of such notices.

- 5.13 Plaintiffs continue to be deprived of their federal constitutional rights under the First Amendment as a result of Defendants’ acts in retaliation against Plaintiffs’ exercise of their constitutional rights, causing them irreparable harm. Defendants’ past practice of retaliation in violation of 42 U.S.C. §1983 provides Plaintiffs with a reasonable basis to fear additional retaliatory acts by Defendants based on Plaintiffs’ planned future exercise of their constitutional rights as part of the Occupy Austin protest. Plaintiffs are thus entitled to an injunction preventing Defendants and their agents, employees, and any other persons or entities acting on their behalf, from engaging in any retaliatory acts against Plaintiffs or other participants in the Occupy Austin protests based (1) on such individuals’ past, present, or future exercise of rights protected under the First Amendment, or (2) based

on the filing or prosecution of this or any other suit seeking to enforce such individuals' rights.

ATTORNEY'S FEES AND COSTS

- 6.01 It was necessary for Plaintiffs to hire the undersigned attorneys to file this lawsuit. Plaintiffs seek the recovery of attorney's fees incurred in the pursuit of this action pursuant to 42 U.S.C. §1988(b) and expert fees pursuant to 42 U.S.C. §1988(c).
- 6.02 Plaintiffs also seek recovery of their expenses and costs of court pursuant to 28 U.S.C. §1920.

DAMAGES

- 7.01 As a direct and proximate result of the Defendants' conduct, Plaintiffs suffered damages for the denial of due process of law and of the First Amendment rights of free expression, peaceable assembly, and petitioning for the redress of grievances.

JURY DEMAND

- 8.01 Plaintiffs demand a trial by jury.

PRAYER

- 9.01 Plaintiffs ask for judgment against Defendants for the following:
- a. A declaration that Defendant's policy of banning individuals from City Hall through use of "Criminal Trespass Notices" violates the First and Fourteenth Amendments to the United States Constitution,

- b. Injunctive relief barring Defendants from banning individuals from City Hall and enjoining implementation of the city's policy regarding issuance of "Criminal Trespass Notices" at City Hall,
- c. Injunctive relief barring Defendants from engaging in any retaliatory acts against Plaintiffs or other participants in the Occupy Austin protests based on such individuals' past, present, or future exercise of rights protected under the First Amendment,
- d. Injunctive relief barring Defendants from engaging in any retaliatory acts against Plaintiffs or other participants in the Occupy Austin protests based on the filing or prosecution of this or any other suit seeking to enforce such individuals' rights,
- e. Such damages for denial of due process of law and of the First Amendment rights of free expression, peaceable assembly, and petitioning for the redress of grievances, as the Court finds appropriate,
- f. Pre-judgment and post-judgment interest,
- g. Reasonable attorney's fees,
- h. Costs of suit, and
- i. Any and all other relief the Court deems appropriate.

Respectfully

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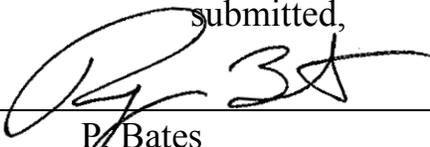
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing pleading on the attorney of record for the defendants, in compliance with the Federal Rules of Civil Procedure on December 1, 2011, via hand delivery and email.

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