IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Jonathan Cole, Katie Sullivan, and Nathaniel Faflick, Plaintiffs, vs. Duane Goossen, in his official capacity as Secretary of Administration; Tom Day, in his official capacity as Legislative Administrative Services Director; and Sherman Jones, Superintendent of Kansas Highway Patrol, Defendants.	)	Case No. 5:19-cv-04028

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Jonathan Cole, Katie Sullivan, and Nathaniel Faflick seek a preliminary injunction to enjoin the enforcement of the Kansas Statehouse ("Statehouse") rules prohibiting them from exercising their First Amendment rights to assemble and petition the government. Although "assembling and expressing grievances at the site of the state government is the most pristine and classic form of exercising First Amendment freedoms," *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963), Defendants maintain a set of rules that effectively foreclose Plaintiffs from engaging in peaceful protests at the Statehouse and its grounds. Plaintiffs are required to obtain prior approval to have any demonstration inside the Statehouse building or on its 20 acres

of adjacent grounds via a permitting process. This process is mandatory even for individual or small group protests. Further, any application for a permit is subject to Defendants' standardless discretion and will only be considered if Plaintiffs first find a legislator willing to endorse their message. Plaintiffs are also categorically banned from bringing any personal signage into the Statehouse, including small handheld signs. If Plaintiffs were to violate Defendants' permitting or signs policy, they would be subject to expulsion penalties set at the unfettered discretion of the individual Kansas Capitol Police officer who detains them—penalties which could include a total ban from the Statehouse.

In the coming months, lawmakers are expected to convene at the Statehouse to vote on legislation that would fundamentally transform the lives of thousands of Kansans—including budget legislation, Medicaid expansion, and fetal personhood. After the session is over, elected officials will continue to meet at the Statehouse for taskforce and committee meetings on equally pressing issues. Plaintiffs seek to engage in individual and three-person demonstrations at the Statehouse without prior approval, to silently display signs expressing opposition or support for pending legislation, and to ensure that neither they nor anyone else is impermissibly or arbitrarily issued a categorical Statehouse premises ban. Declaration of Jonathan Cole ¶ 14; Declaration of Katie Sullivan ¶ 9, Declaration of Nathaniel Faflick ¶ 10.

By requiring Plaintiffs to obtain a permit for meetings and demonstrations involving only three people inside the Statehouse and anywhere on the grounds, Defendants impose an unnecessary and impermissible prior restraint on political expression at the core of First Amendment protection. Moreover, Defendants' blanket prohibition on signs is not narrowly tailored to serve any significant government interest. Finally, the standardless policy permitting Capitol Police to impose indefinite premises bans on members of the public for Statehouse policy

violations, regardless of the severity of the violation, is vague, overbroad, and unconstitutionally suppresses core petitioning activities protected under the First Amendment without due process of law. Each of these infirmities render the Statehouse regulations and policies facially invalid and invalid as applied to Plaintiffs. This motion, however, is based exclusively on Plaintiffs facial constitutional challenges to the Statehouse regulations and usage policy.

For these reasons, and because the other factors weigh in favor of granting a temporary restraining order or preliminary injunction, Plaintiffs' motion should be granted.

FACTUAL BACKGROUND

A. The Kansas Statehouse.

The Kansas Statehouse has been the seat of both the state's executive and legislative branches of government since 1903. The building and its grounds occupy a full city block at SW 8th & SW Van Buren streets in Topeka, Kansas. The building houses historic murals, a gift shop, the state library, and the offices of 165 legislators representing residents of Kansas. The Statehouse is the location where the House of Representatives and Senate convene to pass legislation, legislative committees hold public hearings, and elected officials meet with their constituents. The building is open to the public from 8am to 5pm, six days per week and "attracts 100,000 visitors annually."[1] The Statehouse also hosts hundreds of scheduled events each year[2] and has been the site of political activism on some of the most pressing issues facing our state including gun rights rallies,[3]

[1] *Policy for Usage of the Statehouse and Capitol Complex*, KANSAS DEPARTMENT OF ADMINISTRATION (2017), Rule 1(b), attached as Exhibit A; *see also* Kansas Historical Society Website, https://www.kshs.org/p/kansas-state-capitol-plan-your-visit/18649.
[2] *See Policy for Usage of the Statehouse and Capitol Complex*, Ex. A, at Rule 1(b).
[3] Hunter Woodall, *Kobach tells national walkout students at gun-rights rally to stay in class*, KANSAS CITY STAR (Apr. 20, 2018), https://www.kansascity.com/news/politics-government/article209222789.html.

demonstrations in support of LGBTQ protections,[4] and protests against abortion.[5] House Speaker Ron Ryckman aptly captured the essence of the Statehouse in June 2018, explaining that "[i]t's obviously the people's house."[6]

B. Rules and Regulations Regarding Use of the Statehouse.

K.S.A §75-4505 authorizes the Secretary of Administration to set rules and regulations for conduct at state-owned property in Shawnee County. Two sets of regulatory authorities have been promulgated pursuant to this statute regarding access to the Statehouse: Article 49 of the Kansas Department of Administration Regulations, and a policy entitled "Policy for Usage of the Statehouse and Capitol Complex."[7] The regulations proscribe a wide array of conduct, including unnecessary noise, K.A.R. 1-49-4, and damage to public property, K.A.R. 1-49-5. Additionally, the regulations require prior approval of virtually all expressive activities:

> "No person shall post any notices or petitions upon any grounds or in any public areas of the buildings listed in K.A.R. 1-49-1. No person shall conduct ***any*** meeting, demonstration or solicitation on any of the grounds or in any of the buildings listed in K.A.R. 1-49-1 without prior permission of the secretary of administration or secretary's designee."

K.A.R. 1-49-10 (emphasis added).

The regulations also nebulously describe the penalty for violations to any rules: "Any person violating any of these regulations may be *expelled and ejected from any of the buildings or grounds of the buildings* listed in K.A.R. 1-49-1." K.A.R. 1-49-9 (emphasis added). Notably, the

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[4] Sherman Smith, *'Don't let hateful words define you': Students rally for equality at Kansas Statehouse*, DODGE CITY DAILY GLOBE (Jan. 30, 2019), https://www.dodgeglobe.com/news/20190130/dont-let-hateful-words-define-you-students-rally-for-equality-at-kansas-statehouse.

[5] Irin Carmon, *Kansas abortion ban challenged in court*, MSNBC (June 1, 2015), http://www.msnbc.com/msnbc/kansas-abortion-law-challenged-court.

[6] *Lawmakers want answers after people locked out of Statehouse*, ASSOCIATED PRESS (June 28, 2018), https://www.usnews.com/news/best-states/kansas/articles/2018-06-28/lawmakers-want-answers-after-people-locked-out-of-statehouse.

[7] *See* Ex. A.

regulations do not define the duration for which a person may be expelled from the buildings or grounds of the Capitol Complex.

The Policy for Usage of the Statehouse and Capitol Complex, also promulgated by the Department of Administration Secretary, contains a number of official rules related to meetings, protests, and demonstrations. First, it establishes that prior approval for access to the Statehouse is to be accomplished through a permit and licensing scheme. The permit scheme requires that an application be submitted at least ten business days in advance, and requires that the applicant: (1) declare a "government purpose"; and (2) list a legislative sponsor. *See* Rule 1(g), Rule 2(a), Rule 3(i). Under the policy, however, and even after proper completion of a permit application, the Department of Administration "will have final authority in determining whether an event may be approved, whether the event relates to a governmental purpose and whether or not any provision of this policy may be waived." Rule 2(e). This permitting requirement contains no explicit exception for individuals or small groups.

> Second, the usage policy establishes the following conduct rules for the Statehouse:
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> Rule 3(h)(xiv)—"Events on Statehouse grounds must not result in damage to or destruction of state property"
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> Rule 3(h)(xv)—"Event must not impede the performance of state business"
>
> Rule 3(h)(xix)—"no banners, signs, exhibits or any other materials will be taped, tacked, nailed, hung or otherwise placed in any manner within the Capitol Complex. Banners and signage, as part of the event, may be attached to easels, tables and/or panels."
>
> Rule 3(h)(xxii)—"no person will be allowed to bring personal signage to any building in the Capitol Complex. Security is authorized to confiscate signs."

Nowhere in either the regulations or the Statehouse usage policy does the Secretary of Administration provide guidance to Capitol Police or the public regarding violations of these usage policies that would justify an exclusion or ban from the premises.

C. The June 18, 2018 Poor People's Campaign Protest.

On June 18, 2018, a group of Kansas residents participating in the Kansas Poor People's Campaign attempted to enter the Statehouse. In response, the Kansas Capitol police locked the doors and told the group that they would be arrested if they remained on the plaza outside of the visitor's entrance. When asked why the group was being threatened with arrest, a Capitol Police officer stated that they were engaged in an unlawful assembly.[8] One member of the group asked if he could enter for a planned meeting with his legislator but was still turned away.[9] The same day, Senator Anthony Hensely encountered a citizen likely not participating in the Poor People's Campaign action who had been locked out of the Statehouse.[10] Capitol Police also excluded a couple of visitors until they could ensure that the visitors were not associated with the Poor People's Campaign.[11] The Capitol Police justified banning the group from exercising their First Amendment rights based on a vaguely asserted concern for safety, merely reciting the platitude that "situations get out of hand and can turn violent in an instant."[12]

In response to the lockout, members of the Legislative Coordinating Council expressed concerns that the Kansas Capitol Police's decision to exclude members of the public from the Statehouse violated the First Amendment and requested that Tom Day, Director of Legislative Administrative Services (LAS), draft a report regarding the Capitol Police's conduct. Day reported that the police had authority to ban or exclude individuals from the Statehouse and that there were no policies guiding officers' ability to exclude or expel individuals.[13] He also asserted that he would oppose the issuance any policy guidance that would limit officer discretion.

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[8] Video from the Poor People's Campaign protest at the Kansas Capitol (June 18, 2018), at 3:25-3:45, *available at* https://www.youtube.com/watch?v=Irvq4tiDjPk.
[9] *Id.* at 11:25-11:50.
[10] *See supra* note 6.
[11] REPORT TO LEGISLATIVE COORDINATING COUNCIL (Nov. 9, 2018), at 2, attached as Exhibit B.
[12] *Id.*
[13] *Id.*

D. The March 27, 2019 Medicaid Expansion Protest.

On March 27, 2019, Plaintiffs and two other activists staged a silent protest in the Statehouse rotunda to call for a vote on HB 2066, a bill that would expand Medicaid coverage for uninsured Kansans. The activists unfurled four large banners that read "Blood on Their Hands #ExpandMedicaid," each banner naming a different House or Senate leader. The banners were removed approximately four minutes after they were posted. When LAS Director Tom Day removed one of the banners, he told Mr. Cole "I am not telling you to leave but don't put the banner down."[14]

Approximately twenty minutes after Day removed the banners, Plaintiffs were stopped by Kansas Capitol police officer Scott Whitsell who identified them as the individuals responsible for hanging the banners. Sullivan Decl. ¶ 5. Whitsell began to escort Plaintiffs out of the building. As Plaintiffs were about the exit the building through the visitor's entrance, Whitsell detained them at the direction of dispatch. Whitsell told the Plaintiffs that he was imposing a ban prohibiting them from entering the Statehouse. Faflick Decl. ¶ 6. When Plaintiffs asked how long they would be banned from the building, Whitsell paused for a moment before telling them the ban would be in place for a year. *Id.* After being held for nearly ten minutes, concerned citizen Davis Hammet approached Plaintiffs to ask why they were being detained. Declaration of Davis Hammet ¶ 4. Whitsell responded "they're breaking policy and I'm giving them a ban on the building and if they come back it will be breaking the law so I'm trying to figure out everything about that."[15] When Hammet inquired again about the reason for the detention, Whitsell provided the same comically

[14] *Students banned from Kansas Statehouse over Medicaid protest*, KSNT NEWS (Mar. 27, 2019), at :44-:57, *available at* https://www.ksnt.com/news/local-news/students-banned-from-kansas-statehouse-over-medicaid-protest/1882006817.

[15] Video recorded on March 27, 2019 by Davis Hammet, at :30-:44, *available at* https://drive.google.com/file/d/1lLASgAvu9m74bz8ph9TKcBpEIy31hTA-/view?usp=sharing.

vague rationale "because they're in the state building which have policies."[16] Plaintiffs were released shortly after Hammet approached. They received no written notice of their ban. Whitsell never informed Plaintiffs what policy they had violated. He also did not refer to the policy when he made statements to the press, explaining only that "there's an expectation of how people act when they're in the building."[17]

On March 28, 2019, Lieutenant Eric Hatcher called Plaintiffs and told them that they were no longer banned from the Statehouse. Cole Decl. ¶ 11. Hatcher told Mr. Cole that while he "did something wrong" by unfurling the banners, a year ban was "a little harsh." *Id.* At no point did Lt. Hatcher identify the specific policy that Plaintiffs had violated. Moreover, Lt. Hatcher did not say that Whitsell had overstepped his authority or imposed an improper penalty. Lt. Hatcher concluded the call by telling Mr. Cole that he was required to obtain a permit to demonstrate with Ms. Sullivan and Mr. Faflick in the future. *Id.*

Following the call with Lt. Hatcher, Mr. Cole reviewed the regulations and rules regarding demonstrations at the Statehouse so that he could avoid being detained and banned in the future. Mr. Cole discovered that he was prohibited from holding any "meeting, demonstration or solicitation" at the Capitol or on its grounds absent prior permission of the Secretary of Administration. He also learned that he could not "bring personal signage to any building in the Capitol Complex" and that he could only have "banners and signage" as part of a preapproved event. Finally, Mr. Cole discovered that he could be banned from the Capitol for any perceived rule violation and that the Capitol Police have no written standards at all to guide their expulsion decisions.

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[16] *Id.* at :53-:59.

[17] John Hanna, *Students banned from Kansas Statehouse over Medicaid protest*, NEW HAVEN REGISTER (Mar. 27, 2019), https://www.nhregister.com/news/article/Kansas-Statehouse-banners-protest-lack-of-13720374.php.

The restrictive scheme of these speech regulations coupled with the threat of another excessive ban have made Plaintiffs reticent to exercise their First Amendment rights to petition the government during the remainder of the legislative session and at future events taking place at the Statehouse during the Summer and Autumn of 2019.

ARGUMENT

A preliminary injunction should be granted if the movant demonstrates: (1) a likelihood of success on the merits; (2) a likelihood that a movant will experience irreparable harm in the absence of an injunction; (3) that the balance of equities tips in the movant's favors; and (4) the injunction serves the public interest. *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016); *Koontz v. Watson*, 283 F. Supp. 3d 1007, 1019 (D. Kan. 2018). As discussed below, consideration of each of these factors support Plaintiff's request for preliminary relief.

I. Plaintiffs are Likely to Succeed on the Merits of their First Amendment Claims.

Plaintiffs are likely to succeed on the merits of their First Amendment claim. Courts use a three-step framework to determine whether content-neutral restrictions on speech are constitutional, assessing: (1) whether the restricted speech is protected by the First Amendment; (2) what kind of forum is at issue; and (3) whether the restriction is a valid regulation of time, place, or manner of speech appropriate for that kind of forum. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 US 788 (1985); *Farnsworth v. City of Mulvane*, 660 F. Supp. 2d 1217, 1224 (D. Kan. 2009).

A. Plaintiffs Proposed Assembly and Speech is Protected by the First Amendment.

This case concerns Plaintiffs' ability to stage a three-person demonstration at the Statehouse without prior approval and to silently picket with small handheld signs in public areas inside the Statehouse. Plaintiffs' proposed actions are undoubtedly core First Amendment activities.

The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. CONST. AMEND. I. The First Amendment equally binds the State of Kansas through the incorporation doctrine of the Fourteenth Amendment. *See, e.g.*, *Rosenberger v. Rector & Visitors of the Univ. of Va.,* 515 U.S. 819, 822 (1995). The right to assemble and protest through silent mediums of expression is also well recognized in First Amendment jurisprudence. *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (noting that the right to petition the government is "not confined to verbal expression" and "certainly include[s] the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be"); *Carey v. Brown*, 447 U.S. 455, 466-67 (1980) (noting that "public issue picketing" is "an exercise of basic constitutional rights in their most pristine and classic form, [and] has always rested on the highest rung of First Amendment values"). This right exists even more forcefully at the "focal point of Kansas government,"[18] which "might well be considered the heart of expressive activity and exchange of ideas." *Bynum v. U.S. Captiol Police Bd.*, 93 F. Supp. 2d 50, 55 (D.D.C. 2000). There should therefore be no question that Plaintiffs' proposed activities to convene a three-person demonstration and display handheld signs are protected by the First Amendment.

B. The Areas of the Statehouse at Issue Are Traditional Public Fora or Designated Public Fora for First Amendment Purposes.

Courts recognize four types of fora: a traditional public forum, a designated public forum, a limited public forum, or a nonpublic forum. Traditional public fora are government properties that have historically been used as places of discussion and debate. Designated public fora are government properties that have not traditionally been sites for public debate but have been intentionally opened up for "use by the public at large for assembly and speech, for use by certain

[18] *See* Ex. A, at Rule 1(b)("The Statehouse is a historic landmark and focal point of State government in Kansas.")

speakers, or for the discussion of certain subjects." *Perry Education Ass'n v. Perry Local Educator's Association*, 460 U.S. 37, 45-46 (1983); *Cornelius*, 473 U.S. at 802 (1985); *Scroggins v. City of Topeka*, 2 F. Supp. 2d 1362, 1369 (1998). Whether the government has created a designated public forum depends on its intent, as evidenced by its "policy and practice" and the "nature of the [government] property and its compatibility with expressive activity." *Cornelius*, 473 U.S. at 801 (1985). Both limited public fora and nonpublic fora are government properties that are not completely open to the public; they are not at issue here.

The Statehouse is, fundamentally, a traditional public forum. It is "the people's house."[19] The place where generations of Kansans have come to express their will, to debate, and to engage their legislators on pressing matters of public concern. Indeed, courts from around the country have held unambiguously that statehouses are traditional public fora. *See*, *e.g.*, *Watters v. Otter*, 986 F. Supp. 2d 1162, 1173 (D. Id. 2013) ("the challenged rules must also be examined under the strictest scrutiny because they regulate expressive conduct taking place in a traditional public forum—the Statehouse and the Capitol Mall area, which are both the operative and symbolic seats of Idaho State government."); *Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383, 1391 (11th Cir. 1993) ("The [Georgia State Capitol] Rotunda's status as a true public forum fundamentally defines the constitutional analysis"); *ACT-UP v. Walp*, 755 F. Supp. 1281, 1287 (M.D. Penn. 1991) ("there is no doubt about the Pennsylvania Capitol's status as a public forum, particularly the rotunda… many different groups have been allowed access to the interior of the building to demonstrate, protest, and carry on other activities"); *Reilly v. Noel*, 384 F. Supp. 741, 746 (D. R.I. 1974) ("[T]he State House rotunda is a public forum appropriate for the exercise of these First Amendment rights"); *see also Pouillon v. City of Owosso*, 206 F.3d 711, 716-717 (6th Cir. 2000)

[19] *See supra* note 6.

(noting that "[n]umerous cases have held that the United States Capitol, as well as state capitols, are proper fora for demonstrations").

At the very least, however, the Statehouse bears the indicia of a designated public forum. First, the public at large has regularly used the grounds and interior spaces of the Statehouse for assembly and public expression. For instance, on April 20, 2018, the Southside of the Statehouse was the site of a pro-gun rally and counter-protest led by students who walked out of classes at USD 501 in support of gun reform.[20] Neo-Nazis selected the Statehouse for their "White Unity Rally" in 2002.[21] Members of the public have also used the interior of the building for meetings and rallies, including the Kansas People's Agenda who used space on the third floor of the rotunda for speeches during a lobby day. The Department of Administration notes that the Statehouse is used for hundreds of events each year. This common practice of opening the Statehouse to any number of causes every year is the primary mark of a designated public forum. *Perry Education Ass'n*, 460 U.S. at 45-46.

Second, the Statehouse grounds and rotunda are physically compatible with expressive activity and possess the objective characteristics of a public forum. *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1125 (10th Cir. 2002) (explaining that physical characteristics of the property determine if property is a public forum rather than government intent) *citing Int'l Soc'y for Krishna Consciousness v. Lee (ISKON),* 505 U.S. 672, 694, 120 L. Ed. 2d 541, 112 S. Ct. 2701 (1992) (Kennedy, J., concurring). Both spaces share physical similarities with traditional public fora since both are large, open, and encompass spaces dedicated to pedestrian passage. *See, e.g., Lehman v. City of Shaker Heights*, 418 U.S. 298, 303 (1974)

[20] Tim Carpenter, *Kansas gun activists, counterprotesters clash at Capitol rally*, TOPEKA CAPITAL-JOURNAL (Apr. 20, 2018), https://www.cjonline.com/news/20180420/kansas-gun-activists-counterprotesters-clash-at-capitol-rally.
[21] Scott Rothschild, *Neo-Nazis to rally in Topeka*, LAWRENCE JOURNAL-WORLD (July 11, 2002), http://www2.ljworld.com/news/2002/jul/11/neonazis_to_rally/.

(recognizing open spaces are probative weight in favor of finding a designated public forum); *First Unitarian*, 308 F.3d at 1128 ("Expressive activities have historically been compatible with, if not virtually inherent in, spaces dedicated to general pedestrian passage.")

Moreover, the grounds and rotunda are open to the public and accessible to a large audience of potential listeners including elected officials and visitors on the property. *(ISKON)*, 505 U.S. at 698-99 (noting "whether the government has permitted or acquiesced in broad public access to the property" as evidence of public forum status). The grounds in particular bear the physical characteristics of a public forum as many of the walkways are indistinguishable from other sidewalks in Topeka. *See*, *e.g.*, *United States v. Grace*, 461 U.S. 171, 182 (1983) (finding Supreme Court grounds were public forum because the "sidewalks comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington, D.C., and we can discern no reason why they should be treated any differently…no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of enclave.").

Thus, public areas of the Statehouse and grounds have historically been used for public expression and the property is compatible with expressive activity. Both are designated fora under the applicable Supreme Court test. *See also Kissick v. Huebsch*, 956 F. Supp. 2d 981, 999 (W.D. Wis. 2013) ("The Wisconsin State Capitol may be thought of as either a traditional or designated public forum").

Regardless of whether the Statehouse rotunda and grounds are traditional or designated public fora, Kansas's challenged restrictions are subject to the same exacting scrutiny. Time, place, and manner restrictions must be "narrowly tailored to serve a significant governmental interest" in both a traditional public forum and designated public forum. *McCullen v. Coakley*, 134 S. Ct. 2518,

2529 (2014) (applying test to a traditional public forum); *Verlo v. Martinez*, 820 F.3d 1113, 1131 (10th Cir. 2016) ("even content-neutral restrictions on speech in a public forum—whether a traditional public forum or a designated public forum—must be narrowly tailored to advance a significant government interest."). As the Supreme Court has noted, this scrutiny of even content-neutral speech regulations is essential to "prevent the government from too readily sacrificing speech for efficiency." *McCullen*, 134 S. Ct. at 2529.

C. The Permit Requirement Lacks Narrow Tailoring and is Therefore Facially Invalid Because It Does Not Include an Exception for Small Groups or Individual Protesters.

Plaintiffs would like to engage in future demonstrations at the Statehouse individually and as a three person group. However, Defendants' regulations impose an unqualified requirement that even an individual person obtain prior permission before engaging in a protest. *See* K.A.R. 1-49-10 ("*No person* shall conduct *any* meeting, demonstration or solicitation […] without prior permission") (emphasis added). The sweeping language of the regulation would suggest that constituents scheduling a meeting with an individual legislator would require a permit. To the extent the regulation seeks to restrain the very business of the Statehouse itself, it is a plainly overbroad regulation that "burdens substantially more speech than necessary." *Verlo v. Martinez*, 820 F.3d at 1135. The Statehouse usage policy also lacks an exception for individual protesters or small groups, and would therefore appear to require a permit for any activity inside the Statehouse beyond entering and being silent. Lt. Hatcher reinforced the fact of a blanket permit requirement when he told Mr. Cole during their March 28 phone call that he would need to "get a permit" if he sought to protest in the future.

Permit requirements are a form of prior restraint for which there is a "heavy presumption against validity." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (*quoting*

Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S. Ct. 631, 9 L. Ed. 2d 584 (1963)); *see also Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 165-66 (2002) ("[i]t is offensive -- not only to the values protected by the First Amendment, but to the very notion of a free society -- that in the context of everyday public discourse a citizen must first inform the government of her desire to speak […] and then obtain a permit to do so").

In this posture, permit requirements that apply to individuals or small groups wishing to exercise their expressive and assembly rights are rarely narrowly tailored and often facially invalid. *See*, *e.g.*, *Marcavage v. City of Chi.*, 659 F.3d 626, 635 (7th Cir. 2011) (noting the "powerful consensus" of courts finding "permit requirements for groups of ten and under to be either unconstitutional or constitutionally suspect"); *Berger v. City of Seattle*, 569 F.3d 1029, 1035 (9th Cir. 2009) ("almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum"); *Knowles v. Waco*, 462 F.3d 430, 436 (5th Cir. 2006) ("requiring a permit for demonstrations by a handful of people is not narrowly tailored to serve a significant government interest"); *American-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005) ("Permit schemes and advance notice requirements that potentially apply to small groups are nearly always overly broad and lack narrow tailoring").

Defendants have stated that their permit rules are designed to "preserve the historic beauty of the Statehouse and Capitol Complex and to ensure the safety of visitors and employees." Rule 1(b). This is likely a legitimate interest. However, it is clear that requiring only individuals and small groups with expressive purposes to obtain a permit is not narrowly tailored to that interest. *See Parks v. Finan*, Case No. C2-03-94, 2003 U.S. Dist. LEXIS 13404, at *42 (N.D. Ohio 2003) (finding that a permit requirement on individual speakers in the Ohio State Capitol was overly

burdensome and insufficiently tailored to the state's goals of "preservation of the historical site, maintaining order and safety, [and] ensuring that adequate support services are available").

People expressing their political views pose no more of a threat to the safety or historical preservation of the Statehouse than an apolitical visitor to the building or the grounds. *See Boardley v. United States DOI*, 615 F.3d 508, 522 (D.C. Cir. 2010) ("The government asserts interests in preventing overcrowding, protecting park facilities, protecting visitors, and avoiding interference with park activities. […] But why are individuals and members of small groups who speak their minds more likely to cause overcrowding, damage park property, harm visitors, or interfere with park programs than people who prefer to keep quiet?"). A silent demonstration by three peaceful activists protesting on the south steps of the Statehouse would not cause more of a disruption or security threat than a group of three visitors taking a selfie in the same location. One protester reading talking points in opposition to a bill in the earshot of bypassers does not denigrate the historic beauty of the Statehouse more than a person standing in the same location speaking on their phone. If Defendants present a concern that protesters will interfere with ingress and egress, they are no more an obstruction than other visitors. *See, e.g., Lederman v. United States*, 351 U.S. App. D.C. 386, 291 F.3d 36, 43 (D.C. Cir. 2002) ("If people entering and leaving the Capitol can avoid running headlong into tourists, joggers, dogs, and strollers . . . then we assume they are also capable of circumnavigating the occasional protester."). To the extent Defendants seek to ban activity that would damage property or disrupt state business, they have rules that already specifically prohibit this conduct. See Rule 3(h)(xiv)-(xv); K.A.R. 1-49-5.

Therefore like almost every other permit requirement that applies to small groups, K.A.R. 1-49-10 and the Kansas Statehouse usage policy fail narrow tailoring and are therefore invalid on their face. *Marcavage*, 659 F.3d at 635. But the Statehouse permit scheme is also facially invalid

because it impermissibly blocks all individuals located on the Statehouse grounds from engaging in spontaneous speech. *See Boardley*, 615 F.3d 508 at 523 (invalidating a permit requirement that applied to small groups and noting that "the permit requirement effectively forbids spontaneous speech") (*citing Watchtower Bible*, 536 U.S. at 167-68); *Parks*, 2003 U.S. Dist. LEXIS 13404, at *38 ("the Court agrees that the administrative scheme not only hinders but potentially prevents a significant amount of spontaneous speech from entering the marketplace of ideas"); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) ("timing is of the essence in politics …. when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all").

It is patently unreasonable to require an individual person to plan whether or not they will have a spontaneous response to events unfolding in the Statehouse "at least ten business days in advance." Rule 2(a)(i). This is not the nature of our real-time political discourse, and such advance notice requirements—even for larger demonstration groups— have been struck down as unconstitutional speech restraints. *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007) ("Advance notice requirements that have been upheld by courts have most generally been of less than a week.")

D. Defendants' Permitting Scheme Provides the Secretary of Administration and Legislators with An Unconstitutional Degree of Discretion.

Plaintiffs also challenge the unfettered discretion the licensing scheme provides to the Secretary of Administration and legislators through Rules 2 (e)(i) and 3 (i)(ii) in the event he and his small contingent of fellow protesters are not exempted from the permit requirement. Rule 2(e)(i) provides that "the Secretary of Administration or designee will have final authority in determining whether an event may be approved, whether the event relates to a governmental

purpose or whether or not any provision of this policy may be waived." This policy, which provides absolutely no standards for the exercise of discretion whatsoever and vests ultimate authority in government to choose to issue a permit or waive any permit requirements— renders the permitting scheme invalid.

While regulations can vest individual government actors with authority to decline or approve permits to engage in expressive activities, the regulation must articulate a clearly defined standard for approving or denying an application. *See*, *e.g.*, *Shuttlesworth*, 394 U.S. at 149-50 (striking a parade ordinance where a license could be denied by government if in "its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience required that it be refused"). Courts have consistently invalidated regulations that empower a government administrator to approve or deny an application for a permit to engage in expressive activity where the regulation lacks "*precise* and *objective*" standards for approval or rejection. *See*, *e.g.*, *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358, 1362 (11th Cir. 1999). Moreover, a Plaintiff need not have an application denied under a standardless licensing regulation to mount a facial challenge to the licensing scheme. *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133, n10 (1992) ("facial attacks on the discretion granted a decisionmaker are not dependent on the facts surrounding any particular permit decision"). A regulation that provides unfettered discretion in granting or rejecting approval for a permit is unconstitutional "because such discretion has the potential for becoming a means of suppressing a particular point of view." *Lippoldt v. City of Wichita*, Case No. 01-1226-JTM, 2001 U.S. Dist. LEXIS 10565, at *11-12 (D. Kan. 2001); *rev'd on other grounds by Lippoldt v. Cole*, 468 F.3d 1204 (10th Cir. 2006).

Viewpoint discrimination in exercising discretion over permits under the Statehouse usage policy is inevitable. A choice to waive certain permit requirements for one group, or to decide on

a case-by-case basis what constitutes a "governmental purpose" for which a permit will be issued, effectively results in a permit licensure scheme that is impermissibly content-based. *See Lamar Co., L.L.C. v. City of Marietta*, 538 F. Supp. 2d 1366, 1375 (N.D. Ga. 2008) ("the Sign Code cannot be described as content-neutral given the unbridled discretion accorded officials to waive the permit requirement on any ground"); *NAACP, Western Region v. Richmond*, 743 F.2d 1346, 1359 (9th Cir. 1984) ("the waiver provision is uniformly unconstitutional because in all cases it raises the spectre of administrative censorship").

The legislative sponsor requirement imposed by Rule 3(i)(ii) prior to obtaining a permit also gives state legislators ultimate authority over what messages can and cannot be heard at the Statehouse. The rule necessarily prevents public expression of any messages that state legislators do not support. This fails content-neutrality and turns the licensing scheme into a means for suppressing particularly controversial points of view. *Lippoldt*, 2001 U.S. Dist. LEXIS 10565, at *11-12 (*citing Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981)); *see Child Evangelism Fellowship of MD, Inc. v. Montgomery Cty. Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006) ("The Supreme Court has long held that the government violates the First Amendment when it gives a public official unbounded discretion to decide which speakers may access a traditional public forum"); *Perry*, 460 U.S. at 46 (noting that even in a nonpublic forum "the regulation on speech [must be] reasonable and not an effort to suppress expression *merely because public officials oppose the speaker's view*") (emphasis added).

In addition to viewpoint-based suppression of speech, the legislative sponsor requirement also bears no reasonable relationship to the state's articulated goals of preserving the capitol complex and ensuring safety for visitors and employees. Unsupported messages and their

adherents carry no more inherent risk to the building or its patrons than anyone else. *Boardley*, 615 F.3d at 522.

Finally, lacking the support of a legislator is an ultimate bar to the State Capitol as a forum. Hammet Decl. ¶ 5. It leaves absolutely no alternate channels of communication available to the public to communicate its message to Statehouse employees or visitors. *See Initiative & Referendum Inst. v. United States Postal Serv*., 417 F.3d 1299, 1310 (D.C. Cir. 2005) ("The Supreme Court has stressed the importance of providing access within the forum in question) (internal quotations and citations omitted)*; Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir. 1990) ("An alternative is not ample if the speaker is not permitted to reach the intended audience").

E. The Blanket Ban on Signs is Unconstitutionally Overbroad.

Plaintiffs seeks to bring a handheld version of the "Blood on Their Hands" banner they displayed on March 27th to protest in the rotunda in the coming months and would like to use handheld signs to express positions on other key issues before taskforces and legislative coordinating councils during the interim session. However, Rule 3(h)(xxii) prohibits them from bringing "personal signage to any building in the Capitol Complex."

Categorical bans on a medium of speech are inherently suspect. *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994) (ordinance prohibiting signs on residential property was not a time, place, manner restriction that left open adequate substitutes, and noting "our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression…by eliminating a common means of speaking, such measures can suppress too much speech"). A blanket ban on the carrying of signs in the public interiors of the Statehouse is not narrowly tailored to serve a

significant governmental interest. There are three plausible justifications for banning signs, but existing regulations and rules already address them adequately.

First, Defendants will likely argue that there is a significant interest in ensuring that the orderly conduct of official business is not disrupted. However, the Department of Administration has promulgated rules to prevent disruption including regulation K.A.R. 1-49-4, which prevents unnecessary noise that may be associated with an assembly and Rule 3(h)(xiv) which prohibits any conduct that impedes state business. Because Plaintiff does not intend to yell, sing, or chant, there is no justification for preventing a non-boisterous protest with hand-held signage.

To the extent Defendants speculate that the message on Plaintiffs' sign might cause a distraction, the blanket ban sweeps too broadly to achieve this interest. The exact same argument was rejected in *Bynum v. U.S. Capitol Police Bd.*, 93 F. Supp. 2d 50, 57 (D.D.C. 2000), which struck down a federal law making it illegal to "parade, demonstrate, or picket within any of the Capitol Buildings," without qualification. As the court explained, "while the regulation is justified by the need expressed in the statute to prevent disruptive conduct in the Capitol, it sweeps too broadly by inviting the Capitol Police to restrict behavior that is in no way disruptive." *Id.* The Supreme Court similarly struck down the categorical ban on signs applying to its grounds, explaining "We do not denigrate the necessity to protect persons and property or to maintain proper order and decorum within the Supreme Court grounds, but we do question whether a total ban on carrying a flag, banner, or device on the public sidewalks substantially serves these purposes." *Grace*, 461 U.S. at 182 (1983). Further, foreclosing speech because it may be controversial is tantamount to upholding a "heckler's veto," and a patently unconstitutional basis for the restriction. *Liberty & Prosperity 1776, Inc. v. Corzine*, 720 F. Sup. 2d 622, 636 (D. N.J. 2010) (ban on holding signs "might still fail to be content-neutral if the security rationale is based on speech that the

officials expected might 'arouse passions.' The arousal of passions is precisely the point of political speech, not a basis for its restriction.").

Second, Defendants could argue that they have a significant government interest in protecting government property or promoting aesthetics. But the regulations and Statehouse usage policy already prohibit damage to property. *See* K.A.R. 1-49-5 ("No person shall write, scratch, cut or otherwise deface or damage…any of the buildings or grounds of the buildings listed in K.A.R. 1-49-1"); Rule 3(h)(xix) ("no banners, signs, exhibits or any other materials will be taped, tacked, nailed, hung or otherwise placed in any manner within the Capitol Complex. Banners and Signage, as part of the event, may be attached to easels, tables and /or panels"). Plaintiffs also do not seek to post, hang, or affix their signs on any part of the Statehouse or otherwise damage property. Accordingly, it is unclear how a blanket prohibition on signs which are both temporary and solely confined to the person holding the sign, will somehow blight the aesthetics of the Statehouse. Courts have struck down similarly overbroad laws that were not narrowly tailored to satisfy the government's aesthetic interests. *See, e.g., Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 382, 388 (6th Cir. 1996) (blanket ban on lawn signs not narrowly tailored to achieve aesthetic interests).

Finally, Defendants might assert a significant government interest in security. But it is unclear how a handheld sign would pose a threat to security. Holding signs in the presence of elected officials does not threaten their security, even if the sign contains a contentious message. *See Glasson v. City of Louisville*, 518 F.3d 899, 905 (6th Cir. 1975) (police officer's "belief that the destruction of appellant's poster was necessary to presidential security and to public order was not reasonable"), *overruled on other grounds*, 805 F.3d 228 (6th Cir. 2015). If Defendants reassert LAS Director Day's generalized and vague security concerns, they must demonstrate a nexus

between the categorical ban on signs and "the significant state interest of maintaining peace and order in the Capitol." *Kissick*, 956 F. Supp. at 1002. The ephemeral concern that a contentious issue before the legislature could erupt into violent protest is not sufficient to prohibit a peaceful protest. *See*, *e.g.*, *Verlo v. City & Cnty. of Denver*, 124 F. Supp. 3d 1083, 1095 (D. Colo. 2015) (courthouse ban on solicitation not justified by fear that death penalty verdict could result in potentially violent protests) *aff'd by* 820 F.3d 1113, 1124 (10th Cir. 2013). It is well established that the government cannot apply a blanket ban on demonstrations because of "public safety" as it likely has other laws prohibiting unlawful acts that can spawn from nonpeaceful protests. *See McCullen*, 134 S. Ct. at 2537 (striking down ban on protest near abortion clinics where Massachusetts already had a law prohibiting many of the acts, such as obstruction, that gave rise to the government's security concerns); *see also Corzine*, 720 F. Sup. 2d at 636 (rejecting security rationale for blanket ban on signs noting that limiting all signs because certain types of signs may be used as weapons lacked narrow tailoring).

In sum, it is unclear that "alternative measures that burden substantially less speech would fail to achieve the government's interests." *McCullen*, 134 S. Ct. at 2540. Banning all sign-carrying protesters admittedly makes Defendants' jobs easier but "the First Amendment does not permit the State to sacrifice speech for efficiency." *Riley v. Nat'l Fed. for Blind of N.C.*, 487 U.S. 781, 795 (1988). For these reasons, Plaintiff is substantially likely to succeed on the merits of their challenge to Defendants' blanket ban on signs inside the Statehouse.

F. Defendants' Policy of Permitting Capitol Police to Categorically Ban Individuals from the Statehouse Grounds Fails Intermediate Scrutiny Under the First Amendment and Also Violates Procedural Due Process.

Department of Administration regulations codify the unqualified authority to issue bans blocking individuals from being present on Statehouse grounds. K.A.R 1-49-9. The Kansas

Capitol Police have in fact maintained a practice of banning individuals from the Statehouse for future violations they predict will occur as a result of their First Amendment activity. Defendant Day articulated Capitol Police practice in this regard to the Legislative Coordinating Council. He endorsed the day-long ban imposed on members of the Poor People's Campaign explaining "there were no formal policies in place, but the officers had to use their judgment in certain situations in order to protect the safety of the Statehouse and the public."[22] In sum, the Capitol Police apparently have unfettered discretion to issue prior restraints against any individual seeking to enter the Statehouse.

There is likewise no restriction on the period for which a person can be expelled; Capitol Police have authority to ban an individual for however long they believe it is prudent. The police attending the Poor People's Protest decided activists could not enter for 22 minutes. Whitsell determined that Plaintiffs could not return to the Statehouse for a year. When Lt. Hacker called to lift the ban, he did not disclaim the appropriateness of the ban or Whitsell's authority to impose it, he simply conceded that it was a little harsh.

A policy that empowers government agents with the unfettered discretion to ban individuals for petitioning their government is yet another form of unconstitutional prior restraint. *See Promotions v. Conrad*, 420 U.S. 546, 553 (1975) (noting the danger of censorship and of abridgment of our precious First Amendment freedoms is too great where officials have unbridled discretion over a forum's use.). As with all policies involving prior restraint, the Statehouse's property ban procedures must contain narrow, objective, and definitive standards to channel the

[22] Peter Hancock, *Law enforcement can bar protesters from Kansas Statehouse, but not people concealing firearms*, LAWRENCE JOURNAL-WORLD (Nov. 9, 2018), http://www2.ljworld.com/news/state-government/2018/nov/09/law-enforcement-can-bar-protesters-from-kansas-statehouse-but-not-people-concealing-firearms/.

discretion of the official charged with their enforcement. *Forsyth Co.*, 505 U.S. at 130-31 (1992). But a prior restraint that takes the form of an injunction against particular individuals must be even more highly scrutinized. *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 764-765 (1994) ("[i]njunctions […] carry greater risks of censorship and discriminatory application than do general ordinances. […] "when evaluating a content-neutral injunction, . . . standard time, place, and manner analysis is not sufficiently rigorous. We must ask instead whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest").

It is for this reason that courts across the country have facially invalidated laws authorizing absolute bans on access to public property and have also invalidated specific bans as applied to individual plaintiffs. *See*, *e.g.*, *Barna v. Bd. of Sch. Dirs.*, 143 F. Supp. 3d 205, 223 (M.D. Penn. 2015) (noting that the federal courts that have considered a "ban on the entry upon the premises of these governmental entities, have found that such outright, content neutral bans and prohibitions on speech and attendance that are directed at and prohibit future expressive activity are unlawful"); *Canfield v. Batiste*, Case No. C11-5994RJB, 2011 U.S. Dist. LEXIS 158570 (W.D. Wa. Dec. 6, 2011) (TRO blocking the issuance of all trespass warnings from the Capitol Campus because "the restrictions are not reasonable as to time, place or manner, although they are content neutral; and the restrictions are not narrowly tailored to serve a significant governmental interest"); *Yeakle v. City of Portland*, 322 F. Supp. 2d 1119,1127 (D. Or. 2004) (invalidating overbroad trespass ordinance and noting that "[t]he ability to be *physically present* in quintessential public forums is necessary to engaging in free speech in those forums"); *see also Doe v. City of Albuquerque*, 667 F.3d 1111, 1134 (10th Cir. 2012) (finding that a categorical ban on sex offender registrants using the public library was not a narrowly tailored time, place, and manner regulation); *Surita v. Hyde*,

665 F.3d 860, 871 (7th Cir. 2011) ("even if Hyde's restriction were content neutral, no reasonable jury would find a total bar on Surita's speech to have been a valid time, place, or manner restriction").

Importantly, courts have focused on the complete premises ban itself as the constitutional infirmity that fails narrow tailoring, rather than merely the duration of a ban. *See*, *e.g.*, *Sanchez v. City of Austin*, Case No. A-11-CV-993-LY, 2012 U.S. Dist. LEXIS 190686, at *20 (W.D. Tex. Sept. 27, 2012) (invalidating an ordinance that allowed for a total premises ban for certain violations of only up to thirty days); *Brown v. City of Jacksonville*, Case No. 3:06-cv-122-J-20MMH, 2006 U.S. Dist. LEXIS 8162, at * 4 (M.D.Fla. 2006) (invalidating categorical ban on attendance that was limited to the next seven city council meetings). K.A.R 1-49-9 and the Capitol Police practice of issuing full-premises bans to individuals who commit even minor policy infractions—regardless of ban length— therefore violates the First Amendment by restraining vastly more speech than necessary.

The State's authorization of a premises ban regime also triggers mandatory due process protections that Capitol Police and the Department of Administration do not provide. Plaintiffs have a protected liberty interest in accessing government-controlled fora that are open and available to other members of the public. *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1267-68 (11th Cir. 2011) ("Plaintiffs possess a private liberty interest in lawfully visiting city property that is open to the public"), *citing City of Chicago v. Morales*, 527 U.S. 41, 54 (1999) ("[A]n individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is a part of our heritage") (internal citations and quotations omitted). This is also unquestionably true of the Statehouse, the legislative seat of power in the State of Kansas where members of the public can seek to advise and consult their

lawmakers. *See Edwards,* 372 U.S. at 235. Given the current broad discretionary enforcement regime that would allow a premises ban to be issued under an unlimited number of circumstances, there is a significant risk that individuals will be completely barred from the Statehouse unjustly or erroneously.

Several of the courts to confront this concern have asserted that due process requires at least a post-deprivation hearing to review the validity of a premises ban barring an individual from a public forum. *See Catron*, 658 F.3d at 1267-68; *Sanchez*, 2012 U.S. Dist. LEXIS 190686, at *24 (noting the high likelihood of erroneous deprivation because of the broad discretion to issue trespass notices, thereby mandating notice and hearing procedures); *Wilson v. N. E. Indep. Sch. Dist.*, Case No. 5:14-CV-140-RP, 2015 U.S. Dist. LEXIS 132324, at *20-*21 (W.D. Tex. Sept. 30, 2015) (same). Post-deprivation hearings of this kind, which currently do not exist in Kansas by law or practice, are necessary to safeguard and vindicate Plaintiffs' rights.

Moreover, due process requires that a penalty which undermines an individual's substantive rights must "be drawn with some specificity" to "provide 'fair notice' so that its prohibitions may be avoided by those who wish to do so." *SEIU, Local 5 v. City of Houston*, 595 F.3d 588, 596 (5th Cir. 2010). Here the lack of standards for determining whether to impose a ban and what the duration of the ban will be effectively eradicate meaningful notice. *See Brinkmeier v. Freeport*, Case No. 93 C 20039, 1993 U.S. Dist. LEXIS 9255, at *17-*18 (N.D. Il. July 2, 1993) (noting that a lack of policy standards and essentially limitless discretion in applying a ban to public library access violates due process).

For these reasons, Plaintiff is substantially likely to succeed on the merits of their challenge to Defendants' overly burdensome and procedurally insufficient policy related to banning individuals from the Statehouse.

II. The Remaining Factors Weigh in Favor of a Preliminary Injunction.

The remaining factors this Court must consider also weigh in favor of granting preliminary injunction. It is well-established that the suppression of speech, even for short periods, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"), *citing N.Y. Times Co. v. United States*, 403 U.S. 713 (1971). As for weight of the balance of hardships, it is not at all clear how Defendants will suffer if people are allowed to peaceably assemble in small groups and quietly display hand-held signs given all of the existing regulations and rules that serve the government's interests. Finally, an injunction allowing Plaintiffs to assemble and silently display signs does not disserve the public interest. *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010) ("'[T]he public interest will [certainly] be served by enjoining the enforcement of the invalid provisions of state law.'"); *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1276 (11th Cir. 2001) ("The public interest is always served in promoting First Amendment values.").

CONCLUSION

Defendants' permitting scheme, ban on silently displaying hand-held signs, and unprincipled discretion to issue premises bans for the public areas of the Statehouse are not narrowly tailored to achieve a significant government interest, especially since existing regulations and rules already adequately address the government's concerns. Plaintiffs therefore respectfully urge this Court to grant its motion for a preliminary injunction enjoining Defendants from:

(1) Enforcing their permitting scheme under K.A.R. 1-49-10 and the Statehouse usage policy;

(2) Enforcing the Statehouse usage policy's ban on the display of hand-held posters and signs in the public areas of the Statehouse and its grounds;

(3) Issuing any complete premises bans pursuant to K.A.R. 1-49-9 that are exclusively for violations of the Statehouse usage policy.

Date: April 4, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, on this 4th day of April, 2019, which will send a notice of electronic filing to all attorneys of record.

/s/ Lauren Bonds
Lauren Bonds