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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. **FLORENCE E. SEMPLE,** Defendant.	CVB NO. 3127856 **DEFENDANT'S MOTION TO DISMISS** **FACIAL AND APPLIED CONSTITITUIONAL CHALLENGE** **ORAL ARGUMENT REQUESTED**

I. MOTION

Defendant Florence Semple respectfully moves this Court to dismiss the charge filed against her in this matter: "Failure to comply with a lawful order of a peace officer," pursuant to 41 C.F.R. § 102-74.385. FRCrP 12(b)(3). In light of the evidence, the arresting officer lacked probable cause to arrest Semple because the order to leave the public forum violated her First Amendment rights and was thus unlawful. Semple attaches the following brief in support of her motion to dismiss.

A briefing schedule has been agreed upon, and oral argument on this challenge is scheduled for November 8, 2012, at 1:30 p.m. Defendant has conferred with Plaintiffs' counsel, Sarah Spring and William Fitzgerald, for the U.S. Attorneys Office, and they oppose this motion.

II. SUMMARY OF ARGUMENT

Defendant Semple moves to dismiss the below described federal violation based upon both facial and applied constitutional challenges pursuant to the First and Fourteenth Amendments to the United States Constitution.

On July 11, 2012, at approximately 5:00 pm, Florence Semple was ordered to leave a lawful demonstration at the Federal Plaza, or face arrest. She chose to remain and defend her constitutional rights, and received a United States District Court Violation Notice while peacefully sitting in a lawn chair holding a sign regarding the importance of standing up for constitutional rights. The negotiated citation[1] alleged a violation of 41 C.F.R. § 102-74.385 which states, "Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals." While it is not disputed that Ms. Semple refused to comply with the direction of a Federal police officer to leave the public plaza, the order was unlawful because the Order violates her First Amendment Rights under the Constitutions of the United States and Oregon. The order to leave the Plaza came as a result of a change in Government Services Administration (GSA) policies that were enacted to stifle Occupy protests around the country, whereby the GSA mandated (1) all citizens, even a single individual, apply for and receive a permit from the GSA prior to exercising First Amendment rights at this traditional public forum, and, based upon the unfettered discretion of the GSA, if a permit was not granted,

[1] Defense counsel, US Attorney Bud Fitzgerald, and Federal Protective Service Officer Thomas Keedy met on July 10th to discuss the pending "eviction," and the planned arrest of a single nonviolent individual in order to bring this legal challenge to court.

the demonstrator faced arrest; and (2) a permit would be denied by the GSA if the applicant desired to protest between the hours of 10 pm and 7 am; (3) a permit might be denied if the GSA determined that the demonstration was not aesthetically pleasing. The policy of banning certain protests at the Plaza, or limiting them to certain hours or types, is also unconstitutional on its face and as applied.

III. FACTS

On or about May 1, 2012, members of Occupy Eugene (OE) began using the Plaza of the Eugene Federal Building, located at 211 East 7th Avenue, in Eugene, Oregon (the Plaza) as a place to gather, hold picket signs, raise awareness and gain publicity for the Occupy Movement and the political issues relevant to that political movement[2]. Decl. of Mary Broadhurst, p. 2. Historically, the federal government has always intended the Plaza to be a public, free speech venue without limiting speech to particular subjects or time periods, and without requiring permits, except in rare instances. Constructed in 1975, the Plaza is located on a highly visible, busy street corner, is adjacent to courthouses, federal, state, and municipal political offices, and has always been a lawful place for demonstrations and picketers to congregate and exercise their rights. Frequent use of the Plaza for public events is exactly what the government expected and intended to happen when the Plaza was designed and constructed. The federal website states:

> The Eugene Federal Building and Courthouse played a significant civil role in the early 1970s and during the Vietnam War. The plaza was and remains a favored venue as a stage for protests against the government's policies. There is demonstration activity weekly. Large demonstrations occurred in the spring of 2003, over the U.S. invasion of Iraq, in 1991, with a demonstration against the U.S. invasion of Kuwait and in 1992, due to the Rodney King beating. Most of the demonstrations are peaceful and without violence or arrests. The plaza has become a community focal point for citizen gatherings of many types. The courtyard was designed for people to congregate and be part of outdoor events and venues. The courtyard design was not

[2] Such issues included drawing attention to the plight of local homeless people, corporate greed, advocating for human rights, veterans rights, and putting an end to big bank bailouts and foreclosures, to name a few.

intended for political demonstrations, but it has gained cultural and political significance due to these activities.

Http://www.gsa.gov/portal/ext/html/site/hb/category/25431/actionParameter/exploreByBuilding/buildingId/1144#.

Occupy Eugene describes itself as a protest movement focused on democracy, economic security, corporate responsibility, and financial fairness, and is comprised of local citizens dedicated to "a nonviolent movement for accountability in the United States government…" http://occupyeugenemedia.org/contact/. From October 15, 2011, until the present, Occupy Eugene has maintained a protest "occupation" site at various locations around the City. Defendant Semple is a longtime member of Occupy Eugene and has participated in numerous OE protests.

On or about May 1, 2012, Occupy Eugene decided to occupy the Plaza to draw attention to several issues, one of which was the plight of homeless people who did not have a place to legally sleep at night, and must stay awake all night moving from place to place to avoid victimization, police harassment, or arrest. On May 1st, approximately 10-25 people, including the Defendant, were engaged in political organizing, sign-making, and outreach on the Plaza throughout the day and night. Shortly after their arrival, Officer Thomas Keedy of Federal Protective Services (FPS)[3] approached the members and engaged in amicable discussion with the activists. Decl. Broadhurst, p. 2-3. He advised the group that they would not be able to set up a tent that was being used as a prop, and could not sleep at this location; the activists agreed. *Id*. Officer Keedy advised them that they were not doing anything wrong, that they were welcome to remain at this location for as long as they liked, but asked if anyone would be willing to be a point of contact for the group and sign a permit (with the U.S. General Services Administration (GSA)) as a formality. *Id*. Officer Keedy provided them with a permit application, and Mr.

[3] The Federal Protective Services officers provide security at the Plaza.

Terry Purvis, an Occupy Eugene member and firefighter, agreed to be the point of contact and filled out the permit as a gesture of goodwill toward Officer Keedy. The political group was divided at this time as to whether or not they should apply for a permit to protest at the Plaza and brought the issue to their General Assembly for a decision. *Id*.

On May 2, 2012, OE, through Mr. Purvis, submitted a standard 60 day permit application to Officer Keedy, requesting the non-exclusive use of the Plaza from May 1, 2012 until July 1, 2012, to maintain a 24 hour a day presence with up to 60 people for a "1st Amendment Demonstration." *Id*. at 2. Officer Keedy reviewed the application for potential security impacts to the facility and found none. The permit application was filed with GSA and approved for 60 days as requested. OE used the Plaza peacefully and in accordance with the permit, with members occupying the public space and exercising their rights of free speech and assembly 24 hours a day. There were no reported incidents of misuse during the initial 60 days[4].

On or about June 6, 2012, one of Occupy Eugene's member-attorneys, Mary Broadhurst, contacted Officer Keedy about a sound permit for an upcoming event at the Plaza. Officer Keedy told Ms. Broadhurst that she would need to contact the local GSA manager because the rules for permits had been changed by the GSA due to the fact that the GSA had 'bad' experiences with other Occupy groups in other areas. He confirmed that there had been no problems with OE's use of the Plaza. Decl. Broadhurst, p. 2-3. Toward the end of the 60-day permit period, on June 27, 2012, OE filed another application with GSA to renew and extend

[4] The government informed OE that there was one incident where a man was allegedly smoking medical marijuana at the Plaza. He was informed that he was not permitted to do so on federal property, and no other related incidents occurred. During the time that OE was present at the Plaza, a young man not participating in the protest, allegedly tagged government property with paint. The government admitted that they did not believe this person was connected to the OE activists.

their use of the Plaza from July 1, 2012 to July 30, 2012 requesting the same terms of use that had been granted before. *Id*. at 3; Ex. 1.

On or about this time period, OE was informed that due to problems with other Occupy movements, the GSA had decided that they were only permitting protest on federal public forums from 9am to 5pm, and that they were no longer permitting 24-hour assemblies at this location. See Decl. Broadhurst 3. Eventually, GSA Regional Director Chaun Benjamin, altered the hours of assembly from 7:00 am until 10:00pm after OE explained that it was simply outrageous to prohibit all protest after 5pm during the busy after work rush hours. Ex. 2. The GSA continued to deny OE's attempt to comply with the original permit obligations, despite the fact that many of OE members strongly contested the obligation to ask the government for permission to protest at a public forum like the Plaza. On June 30, 2012, OE member Mary Broadhurst informed the GSA that OE had determined to remain without a permit if the GSA was going to force them to accept unconstitutional conditions regarding the times they would be allowed to assemble and protest. Ex. 2. On July 9, 2012, GSA Regional Services Director Chaun Benjamin formally denied Occupy Eugene's second permit application, despite the fact that nothing had changed since the first permit was approved. Ex. 3. The denial was based on the fact that (1) OE used the original permit application that did not contain the new restrictive conditions; (2) OE refused to accept the unconstitutional conditions; (3) OE applied for a permit under the same conditions as contained in the previously issued permit; and (4) OE had requested a 24 hour presence at the Plaza. Ex. 3. The permit denial also stated that the GSA has an interest in preserving the plaza for use by the general public, and maintaining an aesthetically pleasing area, though they never asserted that OE's use of the Plaza violated those interests. *Id*. After the denial of OE's permit application, OE followed the bureaucratic process and exhausted all administrative appeal options. Ex. 5, 6.

On or about July 10, 2012, GSA managers Chaun Benjamin and Don Murphy went to the Plaza to verbally inform OE members that their permit extension had been denied, and that the members must completely and indefinitely vacate the Plaza within 24 hours or GSA would request law enforcement assistance from FPS. Decl. Broadhurst p. 4; Ex. 2; 4. A permit denial letter was attached. Ex. 3. OE informed the GSA managers that they believed they did not need a permit to lawfully assemble on a traditional public forum, and they would continue their First Amendment activities in the face of the permit denial. Ex. 2.

On July 11, 2012, at approximately 5pm, Officer Keedy and FPS Area Commander Michael Foster entered the Plaza and advised the members and non-Occupy citizens who simply came to bear witness to the unconstitutional eviction, that they had to leave the forum or face arrest. Decl. Broadhurst, p. 5. Many people came to the Plaza on this day to stand up in opposition to the new repressive policies the GSA was attempting to thrust upon them, and had not previously been associated with OE. *Id*. Many Eugenians were outraged at the idea that even a single person holding a sign would be required to request and receive a government permit in order to exercise constitutional rights at the Plaza. *Id*. Officer Keedy reiterated that OE's permit had expired and that if they did not vacate the Plaza, they would face citation or arrest by FPS for failure to comply with lawful direction. *Id*. At approximately 6:00 p.m., GSA closed the Plaza to the public and surrounded the area with yellow police tape. To this day, the area remains closed off to the public.

Shortly after 7:00 p.m., all OE members and the public had evacuated the Plaza except for Florence Semple, who remained seated in a lawn chair on the Plaza holding a sign. Officer Keedy again informed Ms. Semple that the Plaza was closed to the public and ordered her to vacate the Plaza. Ms. Semple communicated to Officer Keedy that she was remaining on the Plaza as a matter of conscience, and that she would only leave upon receipt of a citation or arrest

in order to challenge what she believed was an unconstitutional eviction. Officer Keedy informed Ms. Semple of the maximum penalties of disobeying the order, and she chose to stay and exercise her First Amendment Rights. Ms. Semple was arrested for violating 41 CFR § 102-74.385. She was cited and released.

Ms. Semple and Occupy Eugene desire to return to the federal Plaza to lawfully exercise their First Amendment rights in this public forum.

IV. ARGUMENT

A. FIRST AMENDMENT

The First Amendment to the United States Constitution provides that "Congress shall make no law…abridging the freedom of speech…or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

> The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana,* 379 U.S. 64, 74–75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers,* 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) (internal quotation marks omitted).

Snyder v. Phelps, 131 S. Ct. 1207, 1215, 179 L. Ed. 2d 172 (2011).

Courts must follow a three-step process to assess whether any governmental restriction is valid under the First Amendment. *See Mahoney v. Doe*, 642 F.3d 1112, 1116 (D.C. Cir. 2011 (*citing Cornelius v. NAACP Legal Def. & Educ. Fund, Inc*., 473 US 788, 797 (1985)). First, the court must determine whether the First Amendment protects the speech at issue; second, the court identifies the nature of the forum; and third, the court assesses whether the government's justifications for restricting speech satisfy the requisite standard. *Id. (quoting Cornelius*, 473 US at 797).

There should be no dispute that the conduct by Occupy Eugene, including Defendant Semple, falls within the protection of the First Amendment. There should also be no dispute that OE's participation in the "occupation" of the Plaza, including on July 11, 2012, the day of Defendant's arrest, is a matter of public concern and is within the protection of the First Amendment. Clearly, the First Amendment protects Defendant and OE's assembly and speech at the Plaza.

The Supreme Court has distinguished three types of forums on public property: traditional public forums; forums created by government designation; and nonpublic forums. *Cornelius*, 473 U.S. at 802. A traditional public forum is a location that has a long tradition or government authorization to be used for assembly and other free speech activities. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45 (1983). The second category exists when the government has opened public property for expressive activity by the public. *Id*. A nonpublic forum is a place not traditionally used for First Amendment activities and is governed by different standards. *Id.* at 46.

"A regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny." *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678, 112 S. Ct. 2701, 2705, 120 L. Ed. 2D 541 (1992). Such fora are "necessary conduit[s] in the daily affairs of a locality's citizens, but also . . . place[s] where people may enjoy the open air or the company of friends and neighbors in a relaxed environment." *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 651, 101 S. Ct. 2559, 2566, 69 L. Ed. 2d 298 (1981). The government's ability to permissibly restrict expressive conduct in a public forum is "very limited." *United States v. Grace*, 461 U.S. 171, 177, 103 S. Ct. 1702, 1707, 75 L. Ed. 2D 736 (1983).

As noted on p. 3, supra, the government has always held out the Plaza to the public for First Amendment activities, and has always kept it open for such use. *Id. at 45*. There were no limitations on the hours in which the public could use this space, nor were there requirements that the public secure government permission before using the Plaza for lawful First Amendment purposes. The Plaza clearly falls within the traditional public forum category[5].

In traditional public forums, the rights of the government to limit expressive activity are sharply circumscribed. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989); *United States v. Grace,* 461 U.S. at 177; see *Frisby v. Schultz,* 487 U.S. 474, 481, 108 S.Ct. 2495, 2500, 101 L.Ed.2d 420 (1988); *Perry Education Assn.,* 460 U.S. at 45. In order for the government to enforce a content-based exclusion, it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. *See Carey v. Brown*, 447 U.S. 455, 461 (1980). A government may also impose reasonable time, place, and manner constraints in traditional public forums as long as it does not ban a speaker from engaging in First Amendment speech in those forums without satisfying the strictest of scrutiny. *See Clark v. Comty. For Creative Non-Violence*, 468 U.S. 288, 293 (1984). A content-based regulation of speech will not satisfy strict scrutiny if there is a less restrictive means that "would be at least as effective in achieving the legitimate purpose" that is being served. *Reno v. ACLU,* 521 U.S. 844, 874 (1997).

A content-neutral regulation of time, place and manner of expression may be permitted when they are "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n*, 460 U.S. at 45; *Grayned v. City of Rockford,* 408 U.S. 104, 115 (1972); *Cantwell v. Connecticut*, 310 U.S. 296 (1940);

[5] Even if the Court were to determine that the Plaza was a designated public forum, the same standards apply as in a traditional public forum. *Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981); *Arkansas Educ. Television Comm'n v. Forbes*, 523 US 666, 677 (1998).

Schneider v. State of New Jersey, 308 U.S. 147 (1939). If a content-neutral restriction incidentally burdens speech, "intermediate scrutiny" must be applied. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994). To find an ordinance or policy facially invalid the court must determine that a "'realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court.'" *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 11 (1988). If free speech is diminished, the law requires the policy must be "narrowly tailored to serve a significant government interest" and "leave open ample alternative channels of communication or the information." *Ward*, 491 U.S. at 791, 798.

The new GSA policy banning nighttime assembly and expression, as well as the mandate that all people wishing to exercise those rights receive a permit, will 'significantly compromise the rights of all citizens who desire to use the Plaza for expressive purposes, and thus must be found facially invalid.

Because the Plaza is a public forum, Defendant's speech may not be restricted, even in a content-neutral manner, unless the restriction is narrow and necessary to serve a substantial governmental interest[6]. *Yeakle v. City of Portland*, 322 F. Supp. 2d 1119, 1124 (D. Or. 2004), citing *N.A.A.C.P. v. City of Richmond,* 743 F.2d 1346, 1355 (9th Cir.1984); *Gerritsen v. City of Los Angeles,* 994 F.2d 570, 576 (9th Cir.1993). Where a content-neutral regulation, as applied, punishes conduct that is interwoven with speech activity, the regulation is justified if:(1) the government is constitutionally authorized to regulate the conduct; (2) the regulation serves a substantial governmental interest; (3) the governmental interest is not related to the suppression

[6] In addition, the Supreme Court does not allow restrictions to the constitutional rights of citizens based upon future fear of disturbance. *Tinker v. Des Moine Indep. Community School District*, 393 U.S. 503, 508 (1969) ("Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.").

of speech; and (4) any incidental burden on speech is no more than necessary. *City of Erie v. Pap's A.M.,* 529 U.S. 277, 296 (2000). In this case, (1) the government may regulate the Plaza, (2) the regulation does not serve a substantial governmental interest; (3) the governmental interest IS related to the suppression of speech, and (4) the burden on speech is much greater than necessary. Thus, the new GSA policies that ban or preclude protest cannot be justified.

In order for a regulation that infringes on constitutionally protected activity in a public forum to satisfy the fourth prong of *Erie*, the regulation must be narrowly tailored to meet a compelling governmental interest. *Ward*, 491 U.S. at 791. As a result of the government's denial of OE's permit and eviction of all protestors, including Defendant, Defendant and others were completely banned from the Plaza forever—unless they agree to obtain a permit under the new restrictive unconstitutional terms imposed by the GSA. Absent some showing that Defendant and OE were violating laws, damaging property, interfering with business, or hindering other uses of the Plaza, the exclusion did not rationally serve the GSA's purpose. There is no evidence that unpermitted or nighttime assemblies are more or less unlawful or damaging to government interests. In addition, the infringement on Defendant's First Amendment activities caused by the exclusion cannot be said to have been "no greater than necessary." Not only was their protected First Amendment activity of protesting abruptly terminated, but all subsequent First Amendment activity at this location was also terminated—particularly between the hours of 10pm and 7am, or if the individual did not seek government permission for their expressive activity in advance of their demonstration—even if only a single person holding a sign. Therefore, the restrictions placed on Defendant through the enforcement of this GSA exclusion suppress a substantial amount of speech and impose a much heavier burden on speech than necessary.

The First Amendment requires deference to the speaker's determination as to how and when the message should be disseminated. Speakers, "not the government, know best both what

they want to say and how to say it…." *Riley v. Natn'l Fed'n of the Blind in N.C, Inc*., 487 U.S. 781, 790-91 (1988); *Vodak v. Chicago*, 639 F.3d 738, 749 (7th Cir. 2011) (Where spontaneity forms part of the message, "dissemination delayed is dissemination denied."). Furthermore, the Supreme Court has put forth stringent guidelines for blanket restrictions on constitutionally protected speech and expression. The Court, in *Madsen v. Women's Health Center,* 114 S.Ct. 516, 129 L.Ed.2d 593 (1994) stated:

> "... when evaluating a content-neutral injunction, we think that our 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 governmental interest."

The GSA argues that it has a substantial interest in maintaining the Plaza in "an aesthetically pleasing" manner, and in "preserving the plaza for use by the general public." Ex. 3, p. 2). The new GSA policy criminalizes lawful protest unless government consent is obtained first, and also creates an absolute ban to any citizen who desires to exercise their rights 24 hours a day, and in particular, after 10 p.m. or before 7 a.m.. *Id*. However, the District of Oregon ruled:

> "the ability to be *physically present* in quintessential public forums is necessary to engaging in free speech in those forums. However, PCC 20.12.265 precludes plaintiffs and others from being physically present to participate in clearly protected activities such as picketing, demonstrating, delivering a speech, or leafleting. Thus, the ordinance regulates conduct (physical presence) that is essential to a much broader variety of protected speech conduct."

Yeakle, 322 F. Supp. at 1127. Thus, the GSA's policies do not merely regulate nonexpressive conduct; it regulates physical presence in a public forum which is intimately related and essential to a broad variety of protected speech conduct—such as in this instance, where individuals participated in all night vigils.

The new GSA policies prevented OE and the Defendant from being able to lawfully

engage in any form of speech, assembly or other protected activity at the Plaza during day or night hours. The new policy of absolutely requiring every single individual to obtain a government permit in advance or their exercise, and restricting that exercise to the hours of 7am and 10pm, is not narrow and not necessary to serve a substantial governmental interest. *Yeakle* at 1124. A narrowly tailored regulation must not burden substantially more speech than is necessary to further the government's legitimate interests, it must carefully calculate the cost to speech, and must ascertain whether there are not obvious, less burdensome alternatives. *Ward* at 799. Further, given the many alternatives to a complete ban on protest activity at the Plaza by Defendant, Occupy members, or its supporters, as well as a complete ban on protest activity from 10pm to 7am, the policies impose severe restrictions without first using less restrictive alternatives, such as the enforcement of existing criminal laws and sanctions. By banning OE and others from the Plaza, the government reduces the quantity and quality of expression available in Eugene. *Id.* Even if the government were to argue that other free speech areas may exist in Eugene, an alternative location is constitutionally inadequate because Defendant, OE, and others are no longer able to communicate effectively or to reach their intended audience at this unique, longstanding, and powerful free speech location. *Id*. (*citing Members of City council of Los Angeles v. Taxpayers for Vincent,* 466 US 789, 812 (1984); *Bay Area Peach Navy v. United States,* 914 F.2d 1224, 1229 (9th Cir. 1990).) As the Oregon federal court stated in *Rohman v. City of Portland*, 909 F. Supp. 767, 774 (D. Or. 1995), the presence of adequate alternative channels for communication will not save a restriction that is not narrowly tailored. The restrictions on Defendant and OE's expressive activities at the Plaza are not narrowly tailored and fail to satisfy constitutional scrutiny under the First Amendment and this Court must acquit the Defendant and strike the new GSA policies at issue[7].

[7] In the civil context, there have been many cases, both pre and post Occupy, that have

A Federal Court ruled in the *Occupy Columbia* civil case, "The court is merely enjoining Defendants from making up rules that do not comport with the First Amendment as a knee-jerk response to Plaintiffs' occupation." *Occupy Columbia v. Haley,* 2011 WL 6318587 (D.S.C. Dec. 16, 2011). The same ruling should apply in this case. The GSA's knee-jerk response to Occupy protests around the country resulted in overly broad, untailored policies that sterilize traditional public fora from unsettling protest activities, and thus patently violate the First Amendment.

It should also be noted that in the many civil cases pertaining to Occupy protests, the Courts made a point of permitting sleeping and erecting tents as expressive activity in the Occupy Context. *See* footnote 7. In this case, the Occupy Eugene protest context requires a 24-hour presence in light of the subject matter the protestors are demonstrating against (homelessness and legal places to sleep among others) and further establishes that the GSA policies are not narrowly tailored to protect a substantial governmental interests or leave open ample alternative channels of communication.

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established a pattern of cases striking down or modifying public-forum bans that restrict First Amendment activity. *See e.g. Yeakle v. City of Portland*, 322 F. Supp. 2d 1119, 1124 (D. Or. 2004)*, Canfield v. Batiste*, No. C11-5994RJB (W.D. Wash. Filed Dec. 6, 2011) (Occupy Tacoma); *Occupy Fort Myers v. City of Fort Myers,* 2011 WL 5554034 (M.D. Fla, Nov. 15, 2011) (granting, in part, preliminary injunction against enforcement of ordinances requiring permits for parades and protests, setting park hours, and barring camping and loitering; holding occupation to be expressive conduct protected by First Amendment); *Occupy Minneapolis v. County of Hennepin,* 2011 WL 5878359 (D. Minn. Nov. 23, 2011) (granting TRO against enforcement of prohibition on signs or posters, and denying it as against prohibitions on sidewalk chalk, sleeping, and erecting structures on plaza and decision to cut off access to electricity; holding sleeping on plaza and erecting tents or other structures to be protected expressive activity in context of Occupy protests); *Isbell v. City of Oklahoma City*, 2011 WL 6016906 (W.D. Okla. Dec. 2, 2011) (granting TRO against closure of park and enforcement of curfew); *Occupy Columbia v. Haley,* 2011 WL 6318587 (D.S.C. Dec. 16, 2011) (granting PI against policy barring after-hours use of statehouse grounds, including camping and sleeping; holding camping and sleeping to be protected expressive activity in the context of Occupy protests; "The court is merely enjoining Defendants from making up rules that do not comport with the First Amendment as a knee-jerk response to Plaintiffs' occupation."); *Occupy Fresno v. County of Fresno*, 2011 WL 6182325 (E.D. Cal. Dec. 13, 2011) (granting PI against permitting requirements and ban on handbills).

1. GSA's Ban On Nighttime Assemblies Violates The Constitution

The complete ban on protest between the hours of 10 pm and 7 am violates the right to free assembly. As a Court ruled in the recent *Occupy Chicago* case,

> Because parks constitute public forums for citizens to assemble and express political views, governments may only institute content-neutral time, place or manner restrictions that tightly fit substantial government interests. The City's claim that citizen safety, park maintenance, and park preservation constitute the substantial government interests that justifies closing the park seven hours nightly fails because the City routinely closes the park for fewer than seven hours nightly, making ad hoc exceptions to the Curfew for permitted groups. Thus, the City necessarily concedes that fewer than seven hours suffices to satisfy the substantial government interests. Because it is undisputed that the City closes Grant Park longer than necessary to serve the governments interests, the Curfew is not narrowly tailored, in violation of the First Amendment.…Accordingly the Curfew is unconstitutional both on its face and as applied, and all complaints in this case are dismissed with prejudice.

City of Chicago v. Tieg Alexander, et. al, Case No. 11 MC1-237718, et. seq (Cook Co., IL Circuit Court, Sept. 27, 2012), attached as Ex. 7. The *Occupy Chicago* Court also ruled:

> Laws curtailing the rights of citizens to participate in late night assemblies reach "a substantial amount of protected conduct." *Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1062 (7th Cir. 2004) (full cite added). While "no doubt many if not most of the participants would find it more convenient to exercise their First Amendment rights other than in the dead of night," it is not coincidental that "so many of the expressive activities… occur late in the evening." Id. at 1062. Because so many expressive activities take place at night, government actions that curtail nighttime assemblies necessarily impose a burden on expressive First Amendment conduct. ....
>
> …[M]ore often, however, "the late hour is closely linked with the purpose and message of the activity." Id. For example, "Take Back the Night marches and rallies frequently extend to and after midnight in order to protest the crimes that jeopardize the security of women at night." *Id*. ….Political movements often employ all-night vigils because of their commemorative power…" *Id*. at 1063.
>
> Under the First Amendment, if the burdens imposed on expressive activity are greater than necessary to serve the substantial government interest, it is inadequate to claim that the citizens could engage in "protected activity during the ample [daylight] hours," or "during [late night] hours" in other places. *Id*. at 1062.

Id. at pp. 10-11.

As with the *Occupy Chicago* case, the GSA policy forbidding assembly and speech between the hours of 10pm and 7am is, in effect, an unconstitutional curfew on its face and as

applied. OE has chosen to hold all-night vigils to draw attention the importance of their issues, and to illustrate the plight of homeless people who do not have a lawful place to remain at night. Decl. Broadhurst, p. 4. OE's purposeful choice to express themselves 24 hours a day is part of the message they wish to convey. Thus, the GSA's denial of OE's permit based exclusively on their request for a 24-hour presence, is unconstitutional. And finally, the order to Semple and others to leave the Plaza based upon this unconstitutional denial, is also unconstitutional.

The policy challenged by the Defendant does not mention speech or conduct on its face. Instead, the policy banning late night assemblies is content-neutral, but is not narrowly tailored, does not leave open ample alternative channels of expression, and the restrictions on expression do not tightly fit the government's objective of keeping the Plaza "aesthetically pleasing." The government has not stated a rationale for it's "need" to close the Plaza at night, other than implying they are attempting to curtail Occupy protests around the country. *See* Decl. Broadhurst at pp. 2-3. It is unlikely the GSA can assert a rationale that would require the complete closure of the Plaza for nine hours every night, and thus imposes a far greater burden on speech than necessary to serve their legitimate interests. It is reasonably foreseeable that citizens not before the Court will also be gravely affected by the night assembly ban at the Plaza, and thus the ban will be "unconstitutional in a substantial number of its applications." *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50 (2008).

The history of the federal Plaza makes it clear that this location is a quintessential public forum. *See Perry Educ. Ass'n,* 460 U.S. at 45. The location is the only logical, desirable, and realistic alternative for safe, visible late night assemblies for OE. The court must defer to the speaker's choice, and OE as well as many, many other groups and individuals have consistently chosen the Plaza as their forum. Because the GSA policy ban facially violates the First Amendment, it is an "affirmative matter" compelling dismissal of the charge pending. *See*

Virginia v. Black, 538 U.S. 343, 387 (2003).

2. GSA's New Policies Are Content Based Restrictions

Alternatively, the new policies restricting First Amendment rights are content-based restrictions of speech and expressive conduct because the GSA's implementation of the new policies that led to OE's eviction were specifically created to curtail protest activity by Occupy groups based on their expressive activities. Decl. Broadhurst at 2-3. The government does not, and cannot argue that Occupy Eugene violated the law or acted in a way that interfered with official government use, access by the general public, or damaged any property. See e.g. Ex. 3. Thus, any content-neutral justifications offered for the ban and policy changes must be taken as pretextual. *See Ridley v. Mass. Bay Transp. Auth.,* 390 F. 3d 65, 86 (1st Cir. 2004). Rather than serving a compelling government interest, the GSA has singled out the Occupy movement and is gravely curtailing their rights of assembly and speech because of their affiliation and message. To restrict the speech of Defendant and other members of the Occupy movement based on their affiliation with a particular group, or with the content of their message, is not content neutral and violates the Equal Protection Clause. Although the terms of the policy do not specifically address the content of speech, the motive for these policy changes, and the denial of OE's permit, were based on the content and expressive activities of Occupy movements in other locations. Decl. M. Broadhurst, pp. 2-3.

Even though the GSA was not bold enough to specifically address their true reasons for denying OE's permit and altering their longstanding policies that permitted all First Amendment activity within the Plaza 24 hours a day without a permit, there can be no dispute that their actions completely banned Defendant and OE from the Plaza and continues to preclude

Defendant and others from being physically present to participate in clearly protected activities such as those of the Occupy Eugene protest[8]. It is necessary to be physically present in a public forum to engage in free speech in that forum. *Yeakle*, 322 F.Supp. 2d at 1127. Thus, the GSA policy in this case does regulate conduct through the physical presence at the Plaza that is essential to protected-speech conduct. *See i.d.*

3. GSA Policies Were Enacted with Discriminatory Intent to Stifle Occupy Movement Protests

GSA had a discriminatory intent when it made the decision to change its policies to ban all night assemblies, and require all demonstrators to receive a GSA permit with any/all unconstitutional conditions the GSA wants, prior to exercising constitutional rights. Discriminatory intent can be established by demonstrating a stark pattern of discriminatory effect on one particular class of persons. *Yick Wo v. Hopkins,* 118 U.S. 356, 374 (1886).

Officer Keedy and the GSA managers admitted that the change in GSA policies were as a result of Occupy protests in places other than Eugene. Decl. Broadhurst pp. 2-3. Clearly, by enacting an overnight ban, GSA is attempting to curtail the occupations that have occurred around the country. By enacting, and enforcing, a policy that mandates every single person or group must first obtain government permission to protest, under the conditions and parameters the government dictates, major obstacles are being placed in front of spontaneous Occupy protests, providing law enforcement with an easy justification to shut down assemblies and arrest demonstrators who attempt to defend their lawful right to protest.

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[8] The court will not ignore a clear case of facial unconstitutionality or overbreadth merely because the statute manages to avoid any direct reference to speech or expression. As the Supreme Court acknowledged in *State v. Moyle,* 299 Or 691, 699, 705 P2d 740 (1985), "[t]he constitutional prohibition against laws restraining speech or writing cannot be evaded simply by phrasing statutes so as to prohibit 'causing another person to see' or 'to hear' whatever [speech or expression] the lawmakers wish to suppress."

The GSA policies at issue are facially unconstitutional because they cannot survive even rational relation scrutiny. Even if this Court finds that the *Yick Wo* standard is inapplicable to the present case, the new GSA policies regarding mandatory permits and ban on protests after 10pm should still be found to facially violate of the Equal Protection Clause because it cannot meet the alternative rational relation test. Under traditional equal protection analysis, a legislative or policy classification shall be sustained if it is rationally related to a legitimate governmental interest. *Department of Agriculture v. Moreno*, 413 US 528, 533, 93 S Ct 2821, 37 L Ed 2d 782 (1973). The Equal Protection Clause allows the States wide latitude when economic or social laws are at issue. *Cleburne v. Cleburne Living Center*, 473 US 432, 440, 105 S Ct 3249, 87 L Ed 2d 313 (1985). Classifications within criminal laws, however, are subject to greater scrutiny. *Loving v. Virginia*, 388 US 1, 11, 87 S Ct 1817, 18 L Ed 2d 1010 (1967). Additionally, "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare…desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *Moreno,* 413 US at 534. The GSA's own admission that these new policies were intended to address and hinder Occupy protests around the country establishes their desire to harm an arguably unpopular protest movement and does not amount to a legitimate governmental interest.

B. GSA POLICIES AND EVICTION VIOLATE OREGON'S CONSTITUTION

Pursuant to Article 1, sections 8 and 26 of the Oregon Constitution[9], the freedoms that those sections guarantee provide equal, if not greater, free speech and assembly rights. *State v.*

[9] In *Ciancanelli*, Article I, section 8 jurisprudence was reaffirmed by the Supreme Court by examining the text of that constitutional provision: "Turning our focus to the first clause of Article I, section 8, one is struck by its sweeping terms, both with respect to the legislative power ('[n]o' law shall be passed restraining* * * or restricting) and the kinds of expression protected ('* * * the free expression of opinion, or* * * the right to speak, write, or print freely on any subject whatever'). In fact, the words are so clear and sweeping that we think that we would not

Hirsch, 338 Or 622, 628-629, 114 P3d 1104 (2005); *State v. Ausmus*, 336 Or 493, 500, 85 P3d 864 (2003). The right of assembly guaranteed by section 26 protects an important aspect of the freedom of expression protected by Article I, section 8--it assures that those who speak may have an audience. *State v. Ausmus*, 336 Or at 506-507. A law (or policy) is unconstitutional if it proscribes a constitutionally protected activity. *State v. Robertson,* 293 Or 402, 410, 649 P2d 569 (1982). All speech is constitutionally protected, unless it is a historically excepted form. *Id.* at 412. Thus, the GSA policies of banning expression in a traditional public forum from 10 pm to 7 am, and requiring permits in advance of protest with unconstitutional conditions mandated, violates the Oregon Constitution as well. Further, Defendant's arrest while lawfully protesting violates the Oregon Constitution as applied to her.

C. OCCUPY DID NOT NEED A PERMIT TO PROTEST AT A PUBLIC FORUM

No permit is required to exercise First Amendment rights unless the exercise infringes on the law, or other people's rights. The courts have accepted that though permits are disfavored as a prior restraint, that they violate First Amendment rights, they are tolerated due to public safety concerns as a compelling state interest, so long as they are consistent with reasonable time, place, and manner restrictions.

Often, if speech is spontaneous, permitting ordinances must create exceptions allowing for unpermitted activity to occur. The Supreme Court has recognized the requirements for a spontaneous speech exception and condemned ordinances that do not allow for spontaneous expressive activities as "timing is of the essence in politics . . . and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all."

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be keeping faith with the framers who wrote them if we were to qualify or water them down[.]" *State v. Ciancanelli*, 339 Or 282, 311, 121 P3d 613 (2005) (*emphases omitted; omissions in Ciancanelli*).

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 163 (1969)(Harlan, J., concurring). The Court explicitly recognized this in *Watchtower*, citing a restriction against spontaneous speech as a cardinal reason the ordinance was unconstitutional. *See Watchtower Bible & Tract Soc'y. v. Stratton,* 536 U.S. 150, 167-68 (2002). The GSA policy makes no such exception and in fact serves as a total ban on spontaneous speech, because any spontaneous event taking place at the Plaza would be barred unless a permit was obtained from the GSA. If the government, with the unfettered discretion given by the regulations, decides there is not adequate time to prepare, or simply dislikes the message to be conveyed, a permit can be denied.

Judge Posner stated that while advance notice requirements are "reasonable in general," the failure to include an "exception for spontaneous demonstrations unreasonably limits free speech." *Church of the American Knights of the Ku Klux Klan v. City of Gary, Indiana*, 334 F.3d 676, 682 (7th Cir. 2003). In that case, even the City's "unwritten policy of waiving the permit requirement for a 'spontaneous' demonstration, but only if the demonstration is 'not planned,' was not enough to save the ordinance because the "scope of the dispensation is opaque." *Id*. at 682. The GSA permitting scheme does not even allow for the amount of spontaneous speech which was found insufficient in *Gary*. The court in Watchtower looked at such requirements as "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 to her neighbors and then obtain a permit to do so. . . [A] law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition." *Watchtower*, 536 U.S. at 165-66.

In addition, a permit is usually not required for a march on the sidewalk that obeys all traffic laws, or a modest sized assembly at a public forum like the Plaza, but a permit may be

required for a march in the street requiring traffic diversions by police or city services, or if the assembly is very large and crowd policing may be required. In addition, using loud amplified sound (such as stereo speakers), may require a permit since it infringes on other peoples quiet enjoyment, while using normal amplified sound (megaphone) does not.

The GSA's permitting scheme, which requires that citizens obtain permission from the GSA in order to use public forums such as the Plaza, is an unconstitutional prior restraint because it prevents spontaneous speech by the extreme delay it can cause before a permit is issued, or the delay caused by an appeal of a permit denial.

In addition, the scheme is unconstitutional because there are no real standards governing the GSA's decision to permit or deny certain types of speech. Particularly relevant with Occupy protests, where spontaneity forms part of the message, "dissemination delayed is dissemination denied." *Vodak* at 749.

Long established law states that any attempt to subject "the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority is unconstitutional." *Shuttlesworth*, 394 U.S. at 150-151. "A government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view." *Forsyth*, 505 U.S. at 130. "The doctrine requires that the limits the city claims are implicit in its law be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice. This Court will not write nonbinding limits into a silent state statute." *Lakewood v. Plain Dealer Pub. Co.,* 486 U.S. 750, 770 (1988) (internal citations omitted). "Without these guideposts, post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether licensor is

permitting favorable, and suppressing unfavorable, expression." Id. at 758.

The success of a facial challenge on the basis that an ordinance "delegates overly broad discretion to the decision-maker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so." *Forsyth*, 505 U.S. at 133. If the grant or denial of a permit rests on the "appraisal of facts, the exercise of judgment, and the formation of an opinion," it is content-based and the "danger of censorship and abridgment of our precious First Amendment freedoms is too great to be permitted." *Forsyth*, 505 U.S. at 131 (internal citations omitted). "Even a facially content-neutral time, place, and manner regulation may not vest public officials with unbridled discretion over permitting decisions." *Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1256 (11th Cir. 2004).

A prior restraint cannot vest unfettered discretion in a government official to decide whether to permit or deny the opportunity to engage in protected speech. *See United States v. Abney,* 534 F.2d 984 (D.C. Cir. 1977) (reversing a conviction under a federal regulation banning sleeping in a public park where the superintendent of the park service authority was vested with the ability to grant permission to sleep in public parks beyond time limit specified because the regulation contained no narrow, objective, and definite standards to guard against danger of arbitrary action or de facto censorship). *See also Cox v. State of La.,* 379 U.S. 536 (1965). A facial challenge is appropriate when there is a lack of adequate procedural safeguards necessary to ensure against undue suppression of protected speech. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798 n. 15 (1984); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097, 1100 (9th Cir. 1998), rev'd on other grounds.

The GSA denied OE's permit based on 41 CFR§ 102-74.500(c), which states that federal agencies may disapprove a permit application or cancel an issued permit if the proposed use

interferes with access to the public area, *disrupts* official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property. In addition, the GSA stated one of its interests was to ensure an "aesthetically pleasing" area. Ex. 3.

In this case, the permitting scheme grants unfettered discretion to the government in determining what activity might interfere or disrupt the government or its property, and what might be deemed "aesthetically pleasing." There are no explicit standards listed that would enable any person to determine in what circumstances a permit must be approved or denied and thus the scheme is facially unconstitutional.

D. THE DENIAL OF A PERMIT TO OCCUPY EUGENE SEVERELY RESTRICTS THE EXERCISE OF SPEECH AND ASSEMBLY ON THE FEDERAL PLAZA.

The denial of OE's permit application was based on 41 CFR § 102-74.500(c), which states that federal agencies may disapprove a permit application or cancel an issued permit if the proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property. There is no evidence that OE's use of the Plaza did any of those things, yet the permit was denied in its entirety, and OE members were forced to evacuate or face arrest. When yellow police tape was placed around the Plaza, the public forum was completely foreclosed to the public, thus the restriction was of the most severe variety.

Because the standards for disapproving permits are vague and undefined, the GSA is left with unfettered discretion to determine if an individual, group, or political movement, is engaging in conduct in violation of the regulation. Or in the case at bar, the GSA does not even attempt to state that OE violated existing regulations, they simply created new policies to curtail free speech rights. Although the GSA offers the ambiguous explanation that regulation of the Plaza hours assists in achieving the goals itemized in 41 CFR § 102-74.500(c), OE engages in

the same activities regardless of the time of day and there were absolutely no complaints or incidents during the nighttime demonstrations. The GSA's attempted justification for their denial certainly does not meet the constitutional standards set forth above.

1. The GSA Denied Occupy Eugene Access to the Plaza Under a Federal Statute that was Inapplicable to the Outdoor Plaza.

The subsection relied upon by the GSA to deny OE's permit is 41 C.F.R. § 102-74.500(c), which is pursuant to Subpart D – "Occasional Use of Public Buildings." The Plaza is public property, but not a public building. The distinction is made clear in such regulations as 41 C.F.R. § 102-74.426, which allows breastfeeding "on public properties and inside public buildings." If there were no distinction between public property and public buildings, the regulation would not include both terms. The GSA denial was based on restricted conduct within public buildings, where the government may have more of an interest in limiting expressive activity due to the business functions that might occur. However, OE's activities clearly fall outside of that definition, and are therefore not subject to Subpart D. There has been no proper basis cited for the denial of OE's permit application.

In response to OE'S permit appeal, the GSA counters this argument by saying that the Plaza falls within the definition of "Public Area" under Title 41 C.F.R. Part 102-71. While it is correct that 41 C.F.R. § 102-71.20 defines "public area" as "any area of a building under the control and custody of GSA that is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency" and defines "real property" as, "any interest in land, together with the improvements, structures, and fixtures located thereon," neither of these definitions address the fact that Subpart D governs the occasional use of "public *buildings,*" but not "public *areas*" or "public *property*." The relevant subpart applies solely to the interior portions of buildings.

And, as argued supra, the fact that this Plaza is a traditional public forum weighs heavily against the government's ability to arbitrarily deny citizens the use of such forums for lawful expressive activities.

E. DEFENDANT'S ARREST WAS UNCONSTITUTIONAL AS APPLIED

Even if a policy may be facially valid, enforcement of the policy against a given person in a particular situation may be invalid on an as-applied basis. *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 323 (2002). An as-applied challenge argues that the law was unconstitutionally enforced against a particular speech activity, even though the law may be capable of valid application to others. *Foti v. City of Menlo Park,* 146 F.3d 629, 635 (9th Cir. 1998).

As discussed above, Ms. Semple, as an individual citizen, desired to engage in lawful protest during the daytime hours of July 11, 2012, at the Plaza, a traditional public forum. She was not violating any laws. The only basis for her forced eviction, arrest, and indefinite ban from the Plaza, was her association with the Occupy movement.

In order to restrict First Amendment Rights, government actors may only enforce laws that are narrowly tailored to further a legitimate government interest. A narrowly tailored law imposes the least restrictive means of government action necessary to protect the government interest. In this instance, the means chosen by the GSA to regulate free expression are substantially broader than necessary to achieve the government's purported interest of "protecting property." *Madsen v. Womens' Health Center, Inc.,* 512 U.S. 753, 765 (1994). As discussed *supra*, the government cannot meet the strict scrutiny to restrict her rights and completely ban her from using this forum for expressive activity. The order to leave the public forum under these circumstances violated her First Amendment rights as applied to her.

The GSA's explanation for denying the OE permit, and thus evicting Ms. Semple, is that it has an interest in preserving the Plaza for use by the general public, maintaining an aesthetically pleasing area and keeping the public safe. As she sat holding a protest sign on the Plaza, Ms. Semple was in no way limiting the use of the Plaza by other members of the general public, she was not detracting from the aesthetic appeal of the Plaza, and she exhibited no behavior that could be construed as a safety threat.

Instead of limiting Ms. Semple's freedom of expression to preserve a government interest, the government singled out Ms. Semple because of her status as a protestor with the Occupy Eugene movement. While the regulation under which Ms. Semple was cited may be facially Constitutional, it is unconstitutional as applied to her because the order to vacate the premises was in direct opposition to her First Amendment rights.

V. CONCLUSION

The GSA policies and subsequent eviction of Occupy Eugene violate the right to free speech and assembly under both the First Amendment of the U.S. Constitution, and Article I, sections 8 and 26 of the Oregon Constitution. The GSA policy banning late-night assemblies at the Plaza, a traditional public forum, facially violates the First Amendment. Although the policy may, arguably, be content neutral and may plausibly serve a substantial government interest, it is clearly not narrowly-tailored and fails to leave open ample channels for visible late-night assemblies, and does not tightly fit any legitimate government interest. Further, because the late-night ban facially violates the First amendment, the charge pending must be dismissed. In addition, the policy requiring all citizens desiring to use the Plaza for expressive purposes receive a GSA permit before doing so, violates the Constitution as well. Finally, the FPS order forcing Ms. Semple to stop her lawful protected activities at the Plaza was unlawful and thus violated her constitutional rights as applied. For the foregoing reasons, Defendant respectfully

requests that this Court dismiss the charge currently pending against her, and strike the GSA policies banning nighttime assemblies and requiring advance permitting for all assemblies, as facially unconstitutional.

DATED this September 30, 2012.

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CERTIFICATE OF SERVICE

I certify that on October 1, 2012, I served or caused to be served a true and complete copy of the foregoing **MOTION TO DISMISS** on the party or parties listed below as follows:

_____ Via CM / ECF Filing

__X__ Via First Class Mail, Postage Prepaid

__X__ Via Email

_____ Via Personal Delivery

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